

Section I

Notices of Development of Proposed Rules and Negotiated Rulemaking

**DEPARTMENT OF BANKING AND FINANCE**

**Board of Funeral and Cemetery Services**

RULE TITLE: Residential Solicitations  
 RULE NO.: 3F-9.002

PURPOSE AND EFFECT: The Board proposes to amend this rule to remove references to cemetery company and substitute licensee or certificateholder in its place and change the time for solicitation to 9:00 p.m. rather than 9:30.

SUBJECT AREA TO BE ADDRESSED: Residential Solicitations.

SPECIFIC AUTHORITY: 497.103, 497.115, 497.321 FS.

LAW IMPLEMENTED: 497.115, 497.321 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: Diana Evans, Executive Director, Board of Funeral and Cemetery Services, 101 East Gaines Street, Tallahassee, Florida 32399-0350

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

3F-9.002 Residential Solicitations.

(1) No change.

(2) No licensee or certificateholder, cemetery company officer, director, employee, or agent shall initiate, conduct, or attempt to conduct a pre-need residential solicitation, for the purpose of selling or other transfer of burial rights, merchandise, or services, after the hour of 9:00 ~~9:30~~ p.m. and before the hour of 9:00 a.m. of the next calendar day except upon the prior express request of the person solicited.

(3) No licensee or certificateholder, cemetery company officer, director, employee, or agent shall knowingly initiate, conduct, or attempt to conduct pre-need residential solicitation, for the purpose of selling or other transfer of burial rights, merchandise, or services, of any person, or of any family of any person, who is suffering ill health except upon the prior express request of the person solicited.

Specific Authority 497.103, 497.115, 497.321 FS. Law Implemented 497.115, 497.321 FS. History—New 4-16-86, Formerly 3D-30.034, Amended.

**DEPARTMENT OF INSURANCE**

RULE TITLE: Forms Incorporated by Reference  
 RULE NO.: 4-193.065

PURPOSE AND EFFECT: This rule is being amended to adopt and incorporate the updated version of form D14-477 (Rev 07/02), “Minimum Liquid Reserve Calculation”.

SUBJECT AREA TO BE ADDRESSED: Form D14-477 (Rev 07/02), “Minimum Liquid Reserve Calculation” has been updated and needs to be adopted and incorporated by rule.

SPECIFIC AUTHORITY: 624.308(1), 651.013, 651.015(1),(3) FS.

LAW IMPLEMENTED: 651.021, 651.022, 651.023, 651.024, 651.026, 651.033, 651.035 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., December 12, 2002

PLACE: Room 142, 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 RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Bruce Lulofs, Bureau of Specialty Insurers, Division of Insurer Services, Department of Insurance, (850)413-2490.

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

**DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**Division of Dairy Industry**

RULE CHAPTER TITLE: Milk, Milk Products and  
 RULE CHAPTER NO.: Frozen Desserts

RULE TITLES: Documents Incorporated by Reference  
 RULE NOS.: 5D-1

and Definitions 5D-1.001

Permits, Licenses and Inspections 5D-1.003

Dating; Standards for Milk, Milk Products  
 and Frozen Desserts 5D-1.007

PURPOSE AND EFFECT: The purpose and effect of the rule changes is to amend Rule 5D-1, F.A.C., to address Statute changes.

SUBJECT AREA TO BE ADDRESSED: Updating definitions and document reference and clarifying certain test procedures.

SPECIFIC AUTHORITY: 502.014, 503.031 FS.  
 LAW IMPLEMENTED: 502.012, 502.014, 502.032, 502.042, 502.053, 502.054, 502.165, 502.231, 503.031, 503.041, 503.051 FS.

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

TIME AND DATE: 2:00 p.m., Monday, December 16, 2002  
 PLACE: Eyster Auditorium, 3125 Conner Boulevard, Tallahassee, Florida 32399-1650

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Dr. Hines Boyd, Director, Division of Dairy Industry, Florida Department of Agriculture and Consumer Services, 3125 Conner Boulevard, B-29, Tallahassee, Florida 32399-1650, (850)487-1450

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

**DEPARTMENT OF COMMUNITY AFFAIRS**

**Florida Building Commission**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Product Approval	9B-72
RULE TITLES:	RULE NOS.:
Definitions	9B-72.010
Local Product Approval Generally	9B-72.030
Product Evaluation and Quality Assurance for Local Approval	9B-72.040
Validation of Evaluation for Local Approval	9B-72.045
Product Approval by Local Jurisdiction	9B-72.050
Optional Statewide Approval Generally	9B-72.060
Product Evaluation and Quality Assurance for Optional Statewide Approval	9B-72.070
Product Validation by Approved Validation Entity for Optional Statewide Approval	9B-72.080
Product Approval by Building Commission	9B-72.090
Approval of Product Evaluation Entities, Product Validation Entities, Testing Laboratories, Certification Agencies, Quality Assurance Agencies and Accreditation Bodies	9B-72.100
Criteria for Certification of Independence	9B-72.110
List of Approved Product Evaluation Entities, Validation Entities, Testing Laboratories, Certification Agencies, Quality Assurance Agencies and Accreditation Bodies	9B-72.120
Forms	9B-72.130
Revocation or Modification of Product Approvals and Entity Certifications	9B-72.160
Investigation	9B-72.170
Equivalence of Standards	9B-72.180
Reference Standards	9B-72.190

PURPOSE AND EFFECT: To address issues raised by interested parties since rule adoption and implement proposed modifications as authorized by the Florida Building Commission and to address the issues found to be inconsistent with the law and its intent. The ultimate result is intended to be a rule that, in conjunction with the Florida Building Code, protects the citizens of the State of Florida, can be applied by authorities having jurisdiction, and is not unduly burdensome to manufacturers of construction products.

SUBJECT AREA TO BE ADDRESSED: Statewide system of product approval, including approval, including statewide approval and approval by local authorities having jurisdiction.

SPECIFIC AUTHORITY: 553.842(1),(2),(9),(14),(15) FS.  
 LAW IMPLEMENTED: 553.842(1),(2), (5),(6), (8),(9), (14),(15) FS.

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

TIME AND DATE: 9:05 a.m., December 10, 2002  
 PLACE: Rosen Plaza Hotel, 9700 International Drive, Orlando, Florida

Any person requiring special accommodations at the workshop because of a disability or physical impairment should contact Ila Jones, Community Program Administrator, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100, (850)487-1824, at least seven days before the date of the workshop. 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, IF AVAILABLE, IS: Ila Jones, Community Program Administrator, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100, (850)922-6091

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

**DEPARTMENT OF REVENUE**

RULE TITLES:	RULE NOS.:
Scope of Rules	12-24.001
Definitions	12-24.002
General Requirements	12-24.003
Enrollment	12-24.004
Methods of Payment by Electronic Means	12-24.005
Means of Communication to Report Payment Information	12-24.006
Electronic Payment Transmission Errors	12-24.007
Procedures for Payment	12-24.008
Due Date; General Provisions	12-24.009

General Administrative Provisions; Voluntary Participation; Confidentiality; Granting of Waivers From Electronic Filing Requirements 12-24.010  
 Scope 12-24.021  
 Recordkeeping Requirements – General 12-24.023  
 PURPOSE AND EFFECT: A) Rule 12-24.001, F.A.C. (Scope of Rules) – these proposed amendments explain that the rules in Part I of this rule chapter apply to the payment of fees and the filing of tax returns, and not just the payment of taxes. These changes also explain that the payment of taxes and filing of returns is accomplished by electronic means, instead of by electronic funds transfer (EFT). B) Rule 12-24.002 (Definitions) – these proposed changes establish new definitions for the terms “associated remittance information,” “e-Cash presentment,” “electronic filing,” “electronic payment,” “electronic means,” “e-Services,” and “tax return” which are used in Part I of this rule chapter. C) Rule 12-24.003 (General Requirements) – these recommended revisions clarify that taxpayers who paid \$30,000 or more in taxes or fees in the prior fiscal year (instead of \$50,000 or more) must pay such amounts and file their returns by electronic means. Specifies the taxes and fees subject to “e-payment” and “e-filing”. D) Rule 12-24.004 (Enrollment) – these proposed amendments state that the ACH debit system is the primary method for paying taxes or fees by electronic means. Explains that, by January 1st each year, DOR will notify affected taxpayers that they must pay unemployment compensation tax and file their returns by electronic means. Provides that DOR will send an enrollment package containing three items to taxpayers who are told they must begin paying taxes and/or submitting returns by electronic means: a) an enrollment form; b) an e-Services calendar of due dates for the upcoming calendar year; and, c) an explanation of the options available for filing electronically. Revises the procedures taxpayers must follow after receiving their enrollment package, including encouraging them to use DOR’s Internet site to complete and submit their enrollment form. Changes the information that enrolling taxpayers must provide to the Department. Explains that by completing the enrollment form (DR-600), the taxpayer is agreeing that: 1) the same statutes and rules that apply to paper documents submitted to DOR apply to submissions by electronic means; 2) the submission by electronic means will be in a manner compatible with DOR’s software and equipment, and any failure by the taxpayer will be treated as the failure to file a return or pay; 3) the typing of his or her name on the bottom of the DR-600 constitutes a declaration that the enrollee is authorized to sign on behalf of the applicant; and, 4) the typed name of the enrollee on the correct DR-600 is deemed to appear on any payment or return submitted electronically. Clarifies where a taxpayer can obtain copies of documents and information discussed in Part I. E) Rule 12-24.005 (Methods of Payment by Electronic Means) – these proposed changes conform language in this rule to the proposed new terms and procedures established in other rules in Part I. F) Rule

12-24.006 (Means of Communication to Report Payment Information) – this rule is being repealed because its content is replaced by statutory changes enacted by the 2002 Legislature, and by other proposed amendments contained in this rule package. G) Rule 12-24.007 (Electronic Payment Transmission Errors) – these proposed amendments explain how taxpayers should contact DOR if they have a problem with an electronic payment. Changes from 3:45 to 5:00 p.m. the time by which a taxpayer must complete the transmission of payment information to the Data Collection Center for each taxable period. H) Rule 12-24.008 (Procedures for Payment) – these proposed changes conform the provisions in this rule to the proposed changes for other rules in this part. States that a confirmation code, instead of a verification code, will be sent to the taxpayer at the completion of the transmission of information to the Data Collection Center. Explains that DOR is authorized to revoke the taxpayer’s authorization to use the ACH credit method if a taxpayer fails to submit the required addenda record information with the transaction. I) Rule 12-24.009 (Due Date; General Provisions) – these recommended revisions conform language in this rule to the proposed new terms and procedures established in other rules in Part I. Adds a citation to Rule 60BB-2.028, F.A.C., to ensure that the rules that govern the compromise and settlement of penalties and interest assessed on late-filed unemployment compensation tax apply to late payments made by electronic means. Removes a provision for a grace period that was previously granted by this rule, since there is no statutory authority for such provision. J) Rule 12-24.010, (General Administrative Provisions; Voluntary Participation; Confidentiality; Granting of Waivers From Electronic Filing Requirements) – these proposed changes explain how taxpayers should contact DOR to obtain information about the e-Services program. Conforms language in this rule to the proposed new terms and procedures established in other rules in Part I. Establishes procedures a taxpayer can use to request a waiver from the requirement that he or she submit tax returns by electronic means. States that such waiver is valid for up to one year, and sets conditions for issuing subsequent waivers. K) Rule 12-24.023 (Recordkeeping Requirements – General) – these proposed amendments provide that taxpayers must maintain records that comply with the “adequate records” provisions of Rule 12-3.0012 and DOR publication GT400515. Explains that taxpayers must use the revised DR-600 to enroll to remit taxes and fees, and submit tax returns, by electronic means.

**SUBJECT AREA TO BE ADDRESSED:** The subject area addressed by these rule revisions and repeal is the procedures that govern payment of taxes and fees, and the submission of returns, by electronic means pursuant to changes recently enacted by the Legislature.

SPECIFIC AUTHORITY: 202.26(3)(a), 212.06(1)(a), 213.06(1) FS.

LAW IMPLEMENTED: 202.26(3)(a), 202.28, 202.30, 212.12, 213.34, 213.35, 213.755, 443.1613, 443.163 FS.

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

TIME AND DATE: 3:00 p.m., December 11, 2002

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

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in this workshop is asked to advise the Department at least 48 hours before the workshop 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 IS: Larry Green, Tax Law Specialist, Rules and Policy Administrative Process, Office of the General Counsel, Department of Revenue, P. O. Box 6668, Tallahassee, Florida 32314-6668, (850)922-4830, e-mail: greenl@dor.state.fl.us

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12-24.001 Scope of Rules.

Part I of this rule chapter sets forth the rules to be used by the Department of Revenue in the administration of ss. 202.30 and 213.755, F.S., authorizing the Executive Director to require taxpayers specified by statute or rule to pay remit taxes and fees and to file tax returns by electronic means by electronic transfer of funds. If there is a conflict between these rules and any other rules applicable to the payment of taxes and fees and the filing of tax returns, information reports, and data by electronic means subject to electronic funds transfer, these rules shall govern.

Specific Authority 202.26(3)(a), 213.06 FS. Law Implemented 202.30, 213.755, 443.1613, 443.163 FS. History—New 12-19-89, Amended 10-24-96, 4-30-02, \_\_\_\_\_.

12-24.002 Definitions.

For the purposes of Part I of this rule chapter, the terms and phrases used in these rules shall have the meanings prescribed in this section, unless a different meaning is clearly indicated by the context in which the term or phrase is used.

(1) “ACH” or “Automated Clearing House” means a central distribution and settlement point for the electronic clearing of debits and credits between financial institutions rather than the physical movement of paper items.

(2) “ACH credit” means the payment of funds by electronic means electronic transfer of funds generated by the taxpayer, cleared through the ACH for deposit to the State Treasury.

(3) “ACH debit” means the payment of funds by electronic means electronic transfer of funds from the taxpayer’s account which is generated upon the taxpayer’s instruction and cleared through the ACH for deposit to the State Treasury.

(4) “Addenda record” means that information required by the Department in an ACH credit transfer or wire transfer that is needed to completely identify a taxpayer or provide information concerning a payment, in approved electronic format.

(5) “Associated remittance information” means any payment information required by statute or rules adopted by agencies that administer the programs for which the funds are collected.

(6)(5) “Submission Call-in day” means the day on which a taxpayer communicates payment or tax return information to the Data Collection Center.

(7)(6) “Submission Call-in period” means:

(a) For the electronic submission of a payment and return together, or just a payment, the specified time interval in each submission call-in day during which an electronic EFT payment or electronically-filed tax return information received by the Data Collection Center is processed for transactions occurring on the next business day, or on a date specified by the taxpayer. Electronic payment and electronically-filed tax return Payment information must be communicated to the Data Collection Center and completed no later than 5:00 prior to 3:45 p.m., Eastern Time, on the submission call-in day to clear the ACH for deposit in the State Treasury on the next business day.

(b) For the electronic submission of a return only, any business day on or before the due date.

(8)(7) “Data Collection Center” means the Department, or a third party vendor, who, under contract with the Department, collects and processes electronic payments and electronically-filed tax return EFT payment information from taxpayers.

(9)(8) “Department” means Florida Department of Revenue.

(10)(9) “Due date” means the date on or before which an electronic payment must be received or an electronically-filed tax return must be submitted a payment is required to be made by a taxpayer under a revenue law of this state.

(11) “e-Cash presentment” means the conversion of an electronic check into an electronic payment.

(12) “Electronic-filing” or “electronically-filed” means the submission of a tax return by electronic means.

(13) “Electronic payment” means the remittance of a tax or fee payment by electronic means.

~~(10) “Electronic Funds Transfer” or “EFT” means any transfer of funds initiated through an electronic terminal, telephone instrument, computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account using the methods specified in these rules.~~

(14) “Electronic means” includes any one or more of the following methods of transmitting funds, information, or data: electronic data interchange, electronic funds transfer, telephone, Internet, or any other technology designated by the Department.

(15) “E-Services” means all Department programs associated with the payment of taxes and fees, and the filing of tax returns, information reports, and data by electronic means.

~~(16)(11) “Payment information” means the data which the Department requires of a taxpayer making an electronic payment EFT payment and which must be communicated to the Data Collection Center.~~

~~(17)(12) “Payor” means the taxpayer or an employer, or his or her designee.~~

~~(18)(13) “Personal identification Payor information number (PIN or password)” means a confidential code assigned to each taxpayer which uniquely identifies the payor and allows the payor to communicate payment information and/or return information, information reports, or data to the Data Collection Center. The taxpayer will be given a separate payor identification number for each tax type.~~

~~(19)(14) “State fiscal year” means July 1 through June 30.~~

~~(20)(15) “Taxpayer” means any person required to pay remit an amount by electronic means the electronic transfer of funds or file a tax return, information report, or data by electronic means. For the purpose of these rules, “person” includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit and also includes any political subdivision, municipality, state agency, bureau, or department and includes the plural as well as the singular number. For electronic payment purposes, the The term “person” does not include county tax collectors or those political subdivisions, municipalities, state agencies, bureaus, or departments which remit taxes subject to electronic payment requirements EFT through journal transfer. Solely for the purposes of these rules, a person required to electronically-pay remit a tax or to electronically-file a tax return, information report, or data acting as a collection agent, or dealer for the state, or a person that prepared and reported the Employer’s Quarterly Report (UCT-6) for 5 or more employers in the preceding state fiscal year, shall nonetheless be considered a taxpayer. For the purposes of this definition, “prepared and reported” means the completion of the Employer’s Quarterly Report (UCT-6) and the submission of the completed report directly to the Data Collection Center.~~

(21) “Tax return” shall have the meaning prescribed in subsection (2)(b) of section 213.755, Florida Statutes.

~~(22)(16) “Tax type” means a tax or fee which is subject to remittance of payments and the submission of tax returns, information reports, or data by electronic means EFT, each of which shall be considered a separate category of payment. The tax types for which taxpayers will be required to pay amounts due and/or submit tax returns, information reports, or data by electronic means EFT are as follows:~~

(a) Taxes administered under Chapter 212, F.S., and those taxes and fees reported on the DR-15 form series, including sales and use tax, local option taxes, surcharges, surtaxes, and solid waste fees;

(b) Corporate income/franchise tax (Chapter 220, F.S.) and emergency excise tax (Chapter 221, F.S.), reported on Form F-1120, including the required estimated tax payments (F-1120ES) and tentative tax payments (F-7004);

(c) Taxes on motor fuel, diesel fuel, liquefied petroleum gas, aviation fuel, and pollutants, including local option taxes reported under Chapter 206, F.S. (Form 3096 series);

(d) Gross receipts tax (Chapter 203, F.S.) reported on Form DR-133;

(e) All taxes reported on Forms DR-907 and DR-908, including insurance premium taxes and regulatory assessments subject to the provisions of Chapter 624, F.S., the excise tax on property insurance (s. 175.101, F.S.), and the excise tax on casualty insurance (s. 185.08, F.S.), and the insurance policy surcharge (s. 252.37, F.S.);

(f) Intangible personal property taxes (Chapter 199, F.S.), as reported on Form DR-601 series C;

(g) Severance taxes (Chapter 211, F.S.) and the Miami-Dade Lake Belt Mitigation Fee (Chapter 373, F.S.) reported on Form DR-140 series;

(h) Documentary stamp tax (Chapter 201, F.S.) reported on Form DR-225 or DR-225B;

(i) ~~Communications Communication~~ services tax (Chapter 202, F.S.) reported on Form ~~DR-700016 DR-70016~~ and substitute communications system tax (Chapter 202, F.S.) reported on Form ~~DR-700019 DR-70019~~; and,

(j) Unemployment tax (Chapter 443, F.S.) reported on Form UCT-6 or reimbursement payments billed on Form UCT-29.

~~(17) “Trace number” means the verification code provided by the Data Collection Center upon receipt of all payment information from the payor which uniquely identifies the completed communication of payment information.~~

~~(23)(18) “Treasury” or “State Treasury” means the Treasury of the State of Florida.~~

~~(24)(19) “Wire transfer” or “Fedwire” means an instantaneous electronic funds transfer generated by the taxpayer to the State Treasury.~~

Specific Authority 202.26(3)(a), 213.06(1) FS. Law Implemented 202.30, 213.755, 443.1613, 443.163 FS. History—New 12-19-89, Amended 1-8-91, 10-24-96, 4-30-02, \_\_\_\_\_.

12-24.003 General Requirements.

(1) Any taxpayer subject to the following taxes and fees who has paid that tax or fee in the prior state fiscal year in an amount of \$30,000 ~~\$50,000~~ or more must pay taxes and fees ~~remit tax payments~~ by electronic means ~~funds transfer~~:

- (a) Sales and use tax, local option sales taxes, surcharges, surtaxes, and solid waste fees;
- (b) Corporate income/franchise tax and emergency excise tax;
- (c) Motor fuel, diesel fuel, liquefied petroleum gas, aviation fuel, oil and gas production, and pollutants taxes;
- (d) Local option fuel tax;
- (e) Insurance premium taxes and assessments;
- (f) Gross receipts tax;
- (g) Intangible personal property tax;
- (h) Severance taxes and Miami-Dade Lake Belt Mitigation Fee; and
- (i) Documentary stamp tax (other than remittances subject to s. 213.13, F.S.).

(2) Any taxpayer subject to the following taxes or fees who has paid that tax or fee in the prior state fiscal year in an amount of \$30,000 or more must file tax returns by electronic means:

- (a) Sales and use tax, local option sales taxes, surcharges, surtaxes, and solid waste fees; and
- (b) Intangible personal property tax, who is required to pay the communications services tax or the substitute communications systems tax must remit tax payments by electronic funds transfer in the following manner:

~~(a)1. Any taxpayer who has paid taxes imposed under Chapter 212, F.S. (Sales and Use Tax), in an amount of \$50,000 or more for the state fiscal year July 1, 2000, through June 30, 2001, must remit tax payments by electronic funds transfer beginning with the communications services tax or substitute communications systems tax return due on February 1, 2002.~~

~~2. Any taxpayer who has paid taxes imposed under Chapter 203, F.S. (Gross Receipts Tax), in an amount of \$50,000 or more for the state fiscal year July 1, 2001, through June 30, 2002, must remit tax payments by electronic funds transfer in conjunction with the communications services tax or substitute communications systems tax return due on February 1, 2002.~~

~~(b) Any taxpayer who has paid a combined amount of taxes discussed in paragraph (a) of this subsection in an amount of \$50,000 or more for the state fiscal year July 1, 2000, through June 30, 2001, must remit tax payments by electronic funds transfer in conjunction with the communications services tax or substitute communications systems tax return due on February 1, 2002.~~

~~(3)(e) Any taxpayer who pays communications services tax, gross receipts tax, and sales and use tax or substitute communications systems tax in an aggregate the amount of \$50,000 or more for the state fiscal year ending June 30, 2002, or in any state fiscal year thereafter, must remit communications services tax payments by electronic funds transfer for taxes due during the succeeding calendar year.~~

~~(4) In addition, any taxpayer subject to the taxes enumerated in subsection (1) must pay taxes and fees and/or file tax returns by electronic means if he she:~~

- ~~(a) Filed a zero return for an applicable tax period for taxes due pursuant to Chapters 212 and 220, Florida Statutes;~~
- ~~(b) Filed a consolidated return pursuant to the provisions of Chapter 212, Florida Statutes, for every applicable tax period in the prior state fiscal year; or~~
- ~~(c) Has two or more places of business for which the combined tax and/or fee payments equal or exceed \$30,000 for the state fiscal year ending June 30, 2002, or any year thereafter, for taxes due pursuant to Chapter 212, Florida Statutes.~~

~~(5)(3) All taxpayers required to pay taxes or fees and/or file tax returns by electronic means participate in the EFT program shall participate for the entire a minimum of one calendar year for which they have enrolled. Persons required to participate selected on the basis of prior state fiscal year tax payments will be notified contacted by the Department at their last address of record. Once notified of this selected for the EFT requirement, the taxpayer must electronically transmit by electronic means all payments and/or returns for that tax type as provided in this rule. Changes in a taxpayer's tax liability or registration during an enrollment period shall not suspend or terminate the requirement to pay taxes and file returns by electronic means for the entire calendar year for which he or she is enrolled.~~

Specific Authority 202.26(3)(a), 212.06(1)(a), 213.06(1) FS. Law Implemented 202.30, 213.755, 443.1613, 443.163 FS. History—New 12-19-89, Amended 1-8-91, 11-17-93, 4-30-02, \_\_\_\_\_.

12-24.004 Enrollment Payor Information.

(1) ~~The ACH debit system~~ is the primary EFT method required of taxpayers selected to pay taxes or fees ~~remit funds~~ by electronic means ~~funds transfer~~. ~~The ACH credit system~~ is an electronic payment ~~a payment~~ method available only as an exception to taxpayers who qualify under the provisions of Rule 12-24.005, F.A.C. Wire transfer is an alternative method of paying taxes or fees by electronic means ~~EFT~~ available to taxpayers only as an exception under the provisions of Rule 12-24.008(3), F.A.C.

(2)(a) On or before November 1st (January 1 for taxpayers remitting only unemployment tax), the Department will notify every taxpayer required to pay a tax or fee and/or file a tax return ~~remit a tax~~ by electronic means ~~EFT~~ in the upcoming calendar year, and include with such notification all of the following:

1. An Enrollment and Authorization for e-Services Program a Registration/Authorization Form Florida EFT/EDI Program Electronic Tax Payment System (Form DR-600 DR-600F) or instructions on how to access and complete enrollment on the Department's Internet site; and

2. A a Florida e-Services Programs EFT Program Electronic Tax Payment Calendar of Due Dates (Form DR-659); and

3. An explanation of the options from which the taxpayer must choose to pay taxes or fees and/or file tax returns by electronic means.

(b) A taxpayer who wishes to use the ACH credit method in lieu of the ACH debit method must file a written request with the Department for permission to use the ACH credit method prior to December 1 (February 1 for taxpayers remitting only unemployment tax), as provided in Rule 12-24.005, F.A.C.

(3) Upon receipt of the enrollment package Registration/Authorization Form Florida EFT/EDI Program Electronic Tax Payment System (Form DR-600F), the taxpayer must, on or before December 1 (February 1 for taxpayers remitting only unemployment tax):

(a) Access and complete enrollment on the Department's Internet site; or,

(b) Obtain and complete the form DR-600 and return it to the Department, if the taxpayer is unable to use the Department's Internet site to enroll, by December 1.

(4) Enrollment requires the submission of information on form DR-600 that includes: Pertinent payor information provided with Form DR-600F will be furnished to the State Treasurer's bank and the Data Collection Center.

(a) The enrollee's (taxpayer's) business entity name;

(b)1. The enrollee's tax identification numbers assigned by the federal government and the Department, including tax account number if different from the tax identification numbers;

2. If the enrollee prepared and reported the Employer's Quarterly Report ( form UCT-6) for five or more employers in the preceding state fiscal year, the agent i. d. number assigned by the Department, plus the information required by subparagraph (b)1. of this subsection for such enrollee, and for every employer for which the enrollee currently prepares and reports Form UCT-6.

(c) A contact person's name, mailing address, telephone number, and e-mail address who is responsible for electronic payments and/or electronic filing of returns for the enrollee's business;

(d) Whether the contact person is an employee of the business;

(e) The tax and/or fee type for which the enrollee is enrolling;

(f) The filing and payment method the enrollee requests;

(g) The enrollee's banking information, including the enrollee's bank name, the bank routing number(s), the enrollee's bank account number(s), and information stating whether the account is a savings or checking account (this information is not required if the enrollee is requesting the ACH-credit method); and,

(h) If this is a notification from an enrollee of a change in bank information, the effective date of the change.

(5) By completing and submitting this enrollment request (form DR-600), the enrollee is applying to file tax returns and reports and make tax and fee payments to the Department electronically. In addition, by completing and submitting this enrollment request, the enrollee and the Department agree that:

(a) The same statute and rule sections that pertain to all paper documents filed by the enrollee govern an electronic return, report, or payment initiated electronically pursuant to this enrollment (the completed and submitted DR-600).

(b) The enrollee's electronic transmission of such reports, returns, and payments must be made in a manner compatible with the Department's software, equipment, and facilities. Any failure to comply with this term shall result in the enrollee being deemed to have failed to file a return or payment.

(c) Each tax return or payment other remittance communicated electronically shall be considered to be "in writing" and "written" to an extent no less than as if in paper, to be "signed" and to be an original.

(d)1. By typing his or her name on the signature line of an electronically-submitted form DR-600, the enrollee is declaring, under penalties of perjury, that he or she is authorized to sign on behalf of the applicant entity, and that he or she has read form DR-600, and that the facts stated on the form are true.

2. The typed name of the enrollee or its authorized agent(s) affixed to a completed and properly submitted form DR-600 shall be deemed to appear on electronically filed tax returns, as if actually so appearing.

(e) The enrollee must notify the Department of any changes by completing and submitting a new DR-600, or accessing and completing a change request on the Department's Internet site, no later than 30 consecutive calendar days before the changes are intended to take effect, which provides the Department a reasonable opportunity to act on such changes.

(6)(4) Upon receipt of enrollment payor information from the Department, the Data Collection Center shall assign a confidential personal payor identification number directly to the taxpayer to be used by the taxpayer when communicating electronic payment or return information to the Data Collection Center. This number shall be provided to the taxpayer prior to the date the first required payment is due under the e-services EFT program for all accounts who timely file the form DR-600 Form DR-600F with the Department.

~~(5) A taxpayer must provide at least 30 days advance written notice of any change of information required with the electronic funds transfer authorization form by submitting a revised Form DR-600F to the Department.~~

~~(7)(6)(a) The Department prescribes Form DR-600F, Registration/Authorization Form Florida EFT/EDI Program Electronic Tax Payment System (r. 10/00), Form DR-659, Florida EFT Program Electronic Tax Payment Calendar (r. 10/00), and Form DR-653, Electronic Filing Agreement Florida EFT/EDI Program Electronic Tax Filing System (r. 10/00), as the forms to be used for the purposes of this chapter and hereby incorporates these forms by reference. Copies of the these forms discussed in this rule chapter may be obtained, without cost, by one or more of the following methods: 1) writing the Florida Department of Revenue, Forms Distribution Center, 168A 468 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 for general taxes at (800)352-3671 (in Florida only) or (850)488-6800, or for unemployment tax at (800)482-8293 (nationwide); or 6) downloading selected forms from the Department's Internet site at the address shown inside the parentheses (www.myflorida.com/dor) (http://www.myflorida.com/dor/). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.~~

~~(b) The Department will accept facsimile transmissions of form DR-600 requests (form DR-600F) at telephone number (850)922-5088.~~

Specific Authority 202.26(3)(a), 213.06(1) FS. Law Implemented 202.30, 213.755, 443.1613, 443.163 FS. History--New 12-19-89, Amended 1-8-91, 11-17-93, 4-30-02, \_\_\_\_\_.

~~12-24.005 Methods of Payment by Electronic Means Fund Transfer.~~

~~(1) The Department will utilize the ACH debit transfer as the method by which taxpayers subject to electronic payment EFT requirements shall remit taxes and fees by electronic means funds transfer.~~

~~(2) However, the Executive Director or the Executive Director's designee will grant taxpayers permission to use the ACH credit method on a case by case basis for a limited period of time, as an exception to the required use of the ACH debit method.~~

~~(a) A taxpayer who requests permission to use the ACH credit method must submit a written request to the Department, by December 1 (February 1 for taxpayers remitting only unemployment tax), which demonstrates that the taxpayer is currently using the ACH credit method for other financial purposes on a regular basis.~~

(b) The written request to use the ACH credit method shall be filed with the e-Services ~~E-Services~~ Unit, Florida Department of Revenue, P. O. Box 5885, Tallahassee, Florida 32314-5885, by December 1 (February 1 for taxpayers remitting only unemployment tax). The Department will accept facsimile transmissions of requests at telephone number (850)922-5088. Taxpayers will be notified of the Department's decision ~~within the month of January~~.

(c) The Department reserves the right to revoke the ACH credit method payment privilege of any taxpayer who does not consistently transmit error-free payments; or substantially varies from the requirements and specifications of these rules; or repeatedly fails to make timely electronic payments ~~EFT payments~~ or timely provide payment information; or, repeatedly fails to provide the required addenda record with the electronic ~~EFT~~ payment.

Specific Authority 202.26(3)(a), 213.06(1) FS. Law Implemented 202.30, 213.755, 443.1613, 443.163 FS. History--New 12-19-89, Amended 1-8-91, 11-17-93, 4-30-02, \_\_\_\_\_.

~~12-24.006 Means of Communication to Report Payment Information.~~

~~Taxpayers who participate in the electronic funds transfer program shall use one of two means of communicating payment information through the ACH debit method:~~

~~(1) Operator assisted communication of payment information made orally by rotary or touch-tone telephone; or~~

~~(2) PC entry communication of payment information with a computer or other communication device.~~

Specific Authority 202.26(3)(a), 213.06 FS. Law Implemented 202.30, 213.755, 443.1613, 443.163 FS. History--New 12-19-89, Amended 11-17-93, 4-30-02, Repealed.

~~12-24.007 Electronic Payment Transmission Errors.~~

~~(1) If a taxpayer makes an error on an electronic does not make a correct payment of tax for a particular period, such taxpayer shall, on the nearest business day after the date on which the error is discovered, contact e-Services the E-Services Unit at the telephone number for general taxes at (800)352-3671 (in Florida only), (850)488-6800, or for unemployment tax at (800)482-8293 (nationwide), or at the Department's Internet address at www.myflorida.com/dor 487-7972 for specific instructions.~~

~~(a) If the taxpayer error involves an overpayment of tax, the taxpayer may either elect to have the overpayment applied against the liability for the next reporting period or apply for a refund under the provisions of the applicable tax statute.~~

~~(b) If the taxpayer error involves an underpayment of tax, the taxpayer must make appropriate arrangements to initiate payment for the amount of the underpayment.~~

~~(2)(a) In the event a taxpayer using the ACH debit method communicates electronic payment information to the Data Collection Center after 5:00 3:45 p.m., Eastern Time, on the~~

business day before the due date, the payment shall be posted to the taxpayer's account on the next business day following the due date and shall constitute late payment.

(b) To assist the taxpayer in complying with all statutory requirements for timely electronic payment remittance by EFT of taxes and fees due, the Department will annually develop and distribute form DR-659, which contains detailed information that specifies ~~provides~~ the final time and date for each month of the upcoming calendar year by which the taxpayer must initiate a timely electronic EFT payment of any tax or fee subject to EFT. This form is revised annually to incorporate any changes to dates listed on the previously-issued form that, if not changed for the upcoming calendar year, will occur on a state or federal holiday, or on a weekend.

(3) Except as provided in these rules or Rule Chapter 12-13, F.A.C., a failure to make a timely electronic EFT payment because of other circumstances under the taxpayer's control, including but not limited to insufficiency of funds in the taxpayer's account or a direct payment to the Department using an unauthorized payment method, shall result in the loss of the taxpayer's collection allowance and assessment of the appropriate penalties and interest by the Department.

Cross Reference: Rule 12-24.009, F.A.C.

Specific Authority 202.26(3)(a), 213.06(1) FS. Law Implemented 202.30, 213.755, 443.1613, 443.163 FS. History--New 12-19-89, Amended 1-8-91, 11-17-93, 4-30-02, \_\_\_\_\_.

#### 12-24.008 Procedures for Payment.

##### (1) ACH Debit Method.

(a) The taxpayer must report electronic payment information to the Data Collection Center by the approved means of communication, no later than 5:00 ~~3:45~~ p.m., Eastern Time, on the business day immediately preceding the due date of the payment. The Data Collection Center must be contacted during the submission contact period specified in the detailed instructions provided to enrolled EFT taxpayers, which include Form DR-659. The Department will bear the costs of processing electronic EFT ACH debit payments through the Data Collection Center. Communication by the taxpayer during the submission contact period is mandatory to assure the timely posting of the taxpayer's payment on the following business day.

(b) After establishing contact with the Data Collection Center, the taxpayer is allowed to communicate electronic payment information for more than one tax type or tax period. However, the taxpayer must initiate electronic payment information for each tax type and for each tax period for which an electronic ~~a~~ payment is due. The following electronic payment information is required from the taxpayer:

1. Company and ID number (Payment identification number);
2. Tax payment amount;
3. Tax period;

4. Payment type; and

5. Confirmation Verification code.

(c) A confirmation code will be issued at the conclusion of the communication of the electronic payment information for each payment type and tax period. This number provides a means of verifying the accuracy of the recorded tax payment and serves as a receipt for the transaction.

(d) Shortly after the expiration of the submission contact period, the Department will receive an electronic transmission from the Data Collection Center containing all the payment information that has been communicated by the taxpayer to the Data Collection Center during that submission contact period.

(e) Example. A taxpayer who uses the ACH debit method to remit the January sales tax payment will first determine the total amount of tax due with respect to the sales and use tax return (amount due with return) for the January applied period. Prior to the end of the submission contact period on February 19 (or the last business day prior to the 19th), the taxpayer must contact the Data Collection Center. After establishing contact, the taxpayer will identify the electronic payment EFT account with the preassigned payment identification number and state the payment type (monthly return), the payment amount (\$12,345), and the tax period (January), ~~and the verification code~~. At the end of the communication, the taxpayer will receive a confirmation code which will verify the accuracy of the recorded tax payment and serve as a receipt for the transaction. Electronic payment Payment information involving the ACH debit transfer will be electronically transmitted to the Department on February 19, shortly after the expiration of the contact period. The actual tax payment of \$12,345, however, will not be posted as collected funds to the Treasurer's account until the following day, February 20. Taxpayers must file the required return as provided by law and rule. If applicable, the taxpayer must check the box on the return to show payment by electronic payment EFT.

(2)(a) ACH Credit Method. Taxpayers who have been granted permission to use the ACH credit method must contact their own financial institutions and make the arrangements to transfer the tax payment to the state Treasury account using an ACH credit transfer. The Department will not bear the costs for taxpayers to use the ACH credit method.

(b) To assure the timely receipt of payment of tax, a taxpayer must initiate the payment transaction with its financial institution in time for the payment to be deposited as collected funds to the State Treasury account on or before the appropriate due date.

(c) All ACH credit transfers must be accompanied by a Cash Concentration or Disbursement (CCD) + addenda record, in the format specified by the Department, which includes the following information:

1. Record type code;
2. Addenda type code;
3. Taxpayer identification;

4. Tax type code;
5. Tax period end date;
6. Amount type code;
7. Amount.

(d) ~~The Department will impose the provisions of paragraph (2)(c) of Rule 12-24.005 if the taxpayer fails more than three times in 12 consecutive calendar months, beginning January 1, 2002, to provide the Department with the required addenda record which conforms to the requirements of this rule, the taxpayer will be required to use the ACH debit method.~~

(e) Example. A taxpayer who uses the ACH credit method to remit the January sales tax payment will first determine the total amount of tax due with respect to the sales and use tax return (amount due with return) for the January applied period. At a time arranged between the taxpayer and the taxpayer's financial institution, the taxpayer will provide the taxpayer's financial institution with the information necessary to initiate a timely transfer of the January tax payment and an accompanying CCD + addenda record. The timely initiated ACH credit transfer of \$12,345 will be posted as collected funds to the State Treasurer's account on February 20. To be timely, the ACH credit transfer of January tax must be deposited to the state Treasury account as collected funds on or before February 20. Taxpayers must file the required return as provided by law and rule. If applicable, the taxpayer must check the box on the return to show payment by EFT.

(3) Wire transfer. Taxpayers who, due to circumstances beyond their reasonable control, are unable to initiate a timely electronic payment of tax through the ACH debit method or the ACH credit method may request the Department's permission, on an exception basis, to transmit a payment of tax to the State Treasurer's account via wire transfer. The term "circumstances beyond their reasonable control" includes, but is not limited to, failure of equipment essential to the transmission of the payment, unavailability of the employee(s) who handles such transmissions, or natural disaster.

(a) ~~Prior to initiating the transmission, the taxpayer must contact the E-Services Unit through the E-Services hotline at telephone number (850)487-7972. The taxpayer must fax a written explanation of the emergency situation which prevents timely compliance under either the ACH debit method or ACH credit method and must request written approval to wire transfer the tax payment in question to the State Treasury account. The E-Services fax number is (850)922-5088. The written request must include the information discussed in sub-subparagraphs (3)(b)1.a. through f. of this rule.~~

(b) Taxpayers who are granted written approval to use wire transfer as an exception to either the ACH debit method or ACH credit method will be given specific instructions regarding the payment information that must accompany the wire transfer.

1. All wire transfers must be accompanied by payment information, in addition to an addenda record, in the format specified by the Department, which includes the following information:

- a. Taxpayer's name;
- b. Taxpayer's identification number;
- c. Tax type;
- d. Amount/payment type;
- e. Amount of payment;
- f. Tax period;
- g. Name and account of correspondent bank;
- h. Name of receiving bank;
- i. State treasury account number; and
- j. American Bank Association 9-digit number of receiving bank.

2. The Department will not bear any costs associated with the wire transfer.

(c) Wire transfers which are not received in the State Treasury account on or before the due date of the transmitted payments of tax will constitute late payment, and the applicable late filing penalties, interest, and loss of collection allowance shall apply.

Specific Authority 202.26(3)(a), 213.06(1) FS. Law Implemented 202.30(1), 213.755, 443.1613, 443.163 FS. History--New 12-19-89, Amended 1-8-91, 11-17-93, 4-30-02, \_\_\_\_\_.

#### 12-24.009 Due Date; General Provisions.

(1) Taxpayers who are required to pay taxes or fees ~~remit tax payments~~ through electronic means ~~EFT~~ must initiate the transfer so that the amount due is deposited as collected funds to the State Treasurer's account on or before the due date under the appropriate revenue law. If a tax due date falls on a Saturday, a Sunday, a legal holiday as defined in s. 658.70(1), F.S., or on a legal holiday of the jurisdiction in which the taxpayer's financial institution is located, the deposit by electronic means ~~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. 658.70(1), F.S. If the date on which the taxpayer is required to initiate either an ACH debit or an ACH credit transfer falls on a Saturday, Sunday, or a business or banking holiday, the taxpayer must initiate the transaction on the preceding business day pursuant to subsection Rule 12-24.008(3), F.A.C.

(2) ~~The EFT method of payment does not change any current filing requirements for tax returns.~~ If the electronic EFT payment is not timely made or the tax return required is not electronically-filed ~~filed~~ by the statutory due date, the provisions for late filing penalties, interest, and loss of collection allowance or discount shall apply under the provisions of the appropriate revenue law, except as provided in these rules.

(3) The provisions of s. 213.21, F.S., (s. 443.141(1), F.S., for unemployment tax), shall govern the compromise and settlement of any tax, interest, or penalty assessed due to the late payment of an electronically filed payment, except as provided in these rules.

(a) For electronic payment EFT purposes, “reasonable cause” as stated in s. 213.21, F.S. and Rule Chapter 12-13 and “good reason” as stated in s. 443.141(1), F.S., both include, for the compromise of penalty shall include, in addition to the provisions of s. 213.21, F.S., and Rule Chapter 12-13, F.A.C., the following:

1. The inability to access the electronic payment EFT system on the required date because of a system failure beyond the reasonable control of the taxpayer;

2. The failure of the electronic payment EFT system to properly apply a payment; or

3. The failure of the electronic payment EFT system to issue proper verification of receipt of payment information.

(b)1. A taxpayer who is required to remit payments under the electronic payment EFT program and who is unable to make a timely payment because of system failures within the banking system/ACH interface which are beyond the taxpayer’s control shall not be subject to penalty or interest for late payment or loss of collection allowance or discount. The taxpayer must provide a written explanation and supporting documentation to the E-Services Unit concerning any system failure within the banking system/ACH interface.

2. Taxpayers must ensure that they use reasonable and prudent judgment when selecting a banking system or ACH interface to handle their electronic payment EFT transactions.

(c) Errors made by the Data Collection Center, the State Treasury, or the Department shall not subject the taxpayer to loss of collection allowance or discount, or assessment of penalty or interest for late payment.

~~(4) During the first 3-month period a taxpayer is required to remit tax by EFT, the Department will extend a reasonable grace period of no more than 90 consecutive calendar days to the taxpayer to resolve problems which arise when new administrative procedures, data systems changes and taxpayer operating procedures are implemented. To qualify for a grace period, the taxpayer must demonstrate in writing to the Department that a good faith effort to comply was made, or that circumstances beyond the taxpayer’s reasonable control prevented compliance by the required date, or that a mistake or inadvertence prevented timely payment when the taxpayer attempted to correctly and timely initiate an EFT payment.~~

~~(4)(5) Pursuant to s. 202.28(1), F.S., dealers of communications services who fail to properly pay by electronic means remit the communications services taxes by EFT as required in s. 202.30(1), F.S., are not authorized to claim the collection allowance authorized by s. 202.28, F.S., for the proper remitting of taxes.~~

Specific Authority 202.26(3)(a), 213.06 FS. Law Implemented 202.28, 202.30, 212.12, 213.755, 443.1613, 443.163 FS. History—New 12-19-89, Amended 4-30-02.

12-24.010 General Administrative Provisions; Voluntary Participation; Confidentiality; Granting of Waivers From Electronic Filing Requirements.

(1) Taxpayers who need general information concerning the e-Services programs EFT program can contact the Department toll-free at (800)352-3671 (Florida only) E-Services Unit at (850)487-7972, or (850)488-6800 or for unemployment tax toll free at (800)482-8293 (nationwide), or at the Department’s Internet address at www.myflorida.com/dor Toll Free (800)352-3671 (Florida only).

(2) Voluntary Inclusion in the electronic payment program EFT. Those taxpayers who are required to participate in the electronic payment EFT program due to a prior year tax liability for any tax type subject to electronic payment EFT may request permission to also remit other tax types by electronic payment EFT. Written requests for voluntary inclusion in the electronic payment EFT program must be filed with the e-Services E-Services Unit at least 60 days prior to the due date of the payment(s) in question. Taxpayers may terminate voluntary participation by filing a written notice of termination with the e-Services E-Services Unit at least 60 days prior to the due date of the last electronic EFT payment. Requests for voluntary inclusion and termination notices must be directed to the e-Services E-Services Unit, Florida Department of Revenue, P. O. Box 5885, Tallahassee, Florida 32314-5885.

(3) The Data Collection Center and its employees shall be bound by the same confidentiality requirements as the Department under s. 213.053, F.S.

(4)(a) The Department is authorized to waive the requirement that a taxpayer submit tax returns by electronic means, if the taxpayer can establish that he or she is unable to comply with e-filing requirements pursuant to the provisions in the introductory paragraph to section 213.755, F.S. To request a waiver the taxpayer must complete and submit form DR-654 (Request for Waiver From Electronic Filing), to establish in writing the basis under which such waiver is requested.

(b) Grounds for approving a waiver include, but are not limited to:

1. Any of the circumstances specified in section 213.755(9)(a) and (b), F.S.; or

2. The taxpayer does not have a modem; or

3. The taxpayer does not have access to the Internet.

(c) A waiver shall be valid for up to one year and the issuance of a subsequent waiver shall be contingent on the taxpayer working with the Department during the current waiver period to resolve the problems that originally necessitated the issuance of the waiver.

Specific Authority 202.26(3)(a), 213.06(1) FS. Law Implemented 202.30, 213.755, 443.1613, 443.163 FS. History—New 12-19-89, Amended 1-8-91, 11-17-93, 4-30-02,\_\_\_\_\_.

**PART II TAXPAYER RECORDKEEPING AND RETENTION REQUIREMENTS**

12-24.021 Scope.

Rules 12-3.0012 and 12-24.021 through 12-24.030, F.A.C., and publication GT400515 define the requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information under s. 213.35, F.S. These rules and publications address such requirements where all or a part of the taxpayer’s records are received, created, maintained or generated through computer, electronic, and imaging processes and systems. Unless in conflict with the specific requirements imposed by other rules of the Department, these rules shall govern the recordkeeping and retention requirements imposed by the revenue laws administered by the Department.

Specific Authority 202.26(3)(a), 213.06(1) FS. Law Implemented 202.30, 213.35 FS. History—New 10-24-96, Amended 4-30-02,\_\_\_\_\_.

12-24.023 Recordkeeping Requirements – General.

(1) A taxpayer shall maintain all records that are necessary to make a determination of its correct tax liability for any tax specified in s. 72.011, F.S. All required records must be made available on request by the Department as provided in s. 213.34, F.S. Such records shall comply with the adequate records provisions discussed in Rule 12-3.0012 and publication GT400515, which is adopted by reference in Rule 12-3.0017, F.A.C., and shall include, but not be limited to: books of account, invoices, bills of lading, gross receipts from sales, resale certificates, consumer exemption certificates, and other pertinent records.

(2) through (3) No change.

(4) The Department shall use form ~~Form~~ DR-600 (Enrollment and Authorization for e-Services Program) DR-653 (Electronic Filing Agreement Florida EFT/EDI Program Electronic Tax Filing System) to document an agreement with a taxpayer that such taxpayer will file tax reports and returns by electronic means transmission.

(5) No change.

Specific Authority 202.26(3)(a), 213.06(1) FS. Law Implemented 202.30, 213.34, 213.35 FS. History—New 10-24-96, Amended 4-30-02,\_\_\_\_\_.

**DEPARTMENT OF REVENUE**

**Sales and Use Tax**

RULE TITLES:	RULE NOS.:
Sales for Export; Sales to Nonresident Dealers and Foreign Diplomats	12A-1.0015
Consumer’s Certificates of Exemption; Exemption Certificates	12A-1.038
Sales for Resale	12A-1.039
Fuels	12A-1.059
Registration	12A-1.060

Sales to Licensed Common Carriers Operating Motor Vehicles or Railroad Rolling Stock in Interstate or Foreign Commerce	12A-1.064
Sales of Vessels Used in Interstate or Foreign Commerce or for Commercial Fishing Purposes	12A-1.0641
Rentals, Leases, or Licenses to Use Tangible Personal Property	12A-1.071
Self-Accrual Authorization; Direct Remittance on Behalf of Independent Distributors	12A-1.0911
Public Use Forms	12A-1.097

PURPOSE AND EFFECT: The purpose of the proposed creation of Rule 12A-1.0015, F.A.C. (Sales for Export; Sales to Nonresident Dealers and Foreign Diplomats), is to provide a single administrative rule containing tax guidelines on sales of tangible personal property exported from Florida, sales to nonresident dealers, and sales to foreign diplomats and consular employees. The proposed creation of Rule 12A-1.0015, F.A.C., is necessary to (1) provide that sales of tangible personal property delivered to the purchaser or the purchaser’s representative in Florida are presumed to be delivered in Florida and to be subject to Florida’s sales tax; (2) provide guidelines on how dealers who sell tangible personal property for exportation tax-exempt must commit the property to an exportation process that remains continuous and unbroken; (3) provide examples of methods to commit property to the exportation process; (4) provide definitions for the terms “licensed customs broker” and “forwarding agent”; (5) establish guidelines for documenting tax-exempt sales for export from Florida; (6) provide that sales to nonresident dealers must be documented by obtaining a declaration from the nonresident dealer that the tangible personal property will be transported outside Florida for resale; (7) provide a definition of the term “nonresident dealer,” for purposes of the rule; (8) provide the required elements of a nonresident declaration and a suggested format of the declaration; (9) provide guidelines and documentation requirements for tax-exempt sales to foreign diplomats, consular employees, and members of their families, as determined by the United States Department of State; and (10) provide guidelines for documents required to be maintained by selling dealers for purposes of tax-exempt sales for exportation, for resale outside Florida by nonresident dealers, or for sales to foreign diplomats, consular employees, and members of their families. The purpose of the proposed amendments to Rule 12A-1.038, F.A.C. (Consumer’s Certificates of Exemption; Exemption Certificates), is to: (1) remove the exemption for the export of tangible personal property from the suggested format of an exemption certificate; and (2) provide that documentation requirements for the export of tangible personal property from Florida are provided in Rule 12A-1.0015, F.A.C., as created. The purpose of the proposed amendments to Rule 12A-1.039, F.A.C. (Sales for Resale), is to: (1) provide that documentation requirements for the export of tangible personal property from

Florida are provided in Rule 12A-1.0015, F.A.C., as created; (2) provide that guidelines for tax-exempt sales to nonresident dealers of aircraft, boats, mobile homes, motor vehicles, and other vehicles are provided in subsection 12A-1.007(6), F.A.C.; and (3) remove reference to Rule 12A-1.064, F.A.C., for purchases of vessels and parts from the provisions applicable to persons who claim the resale exemption.

The purpose of the proposed amendments to Rule 12A-1.059, F.A.C. (Fuels), is to: (1) provide that diesel fuel used in a trade or business is subject to use tax; (2) provide that persons who use diesel fuel in a trade or business are required to register and pay use tax directly to the Department, unless the dealer selling the fuel is registered and collecting sales tax on such fuel; (3) provide when the diesel fuel is exempt from sales and use tax; (4) provide that guidelines are provided in Rule 12A-1.064, F.A.C., as amended, and Rule 12A-1.0641, F.A.C., as created, for diesel fuel used to operate railroad locomotives or vessels in interstate or foreign commerce or for commercial fishing purposes that is subject to the partial exemption under s. 212.08(4)(a)2., F.S.; (5) provide that the sale of alternative fuel is subject to sales tax; and (6) provide examples of alternative fuels.

The purpose of the proposed amendments to Rule 12A-1.060, F.A.C. (Registration), is to provide that the following persons are required to register as dealers with the Department: (1) persons desiring to obtain self-accrual authority, as provided in s. 212.183, F.S., or authorization to remit sales tax on behalf of their independent dealers or independent sellers; (2) air carriers electing to remit tax under s. 212.0598, F.S.; and (3) persons who desire to pay tax based on the partial exemptions in ss. 212.08(8) and (9), F.S., directly to the Department.

The purpose of the proposed substantial rewording of Rule 12A-1.064, F.A.C., (Sales to Licensed Common Carriers Operating Motor Vehicles or Railroad Rolling Stock in Interstate or Foreign Commerce), is to provide guidelines for the partial exemption provided in s. 212.08(9), F.S., for railroad rolling stock and parts and motor vehicles and parts in a single administrative rule. The proposed substantial rewording is necessary to: (1) change the title of the rule section to "Sales to Licensed Common Carriers Operating Motor Vehicles or Railroad Rolling Stock in Interstate or Foreign Commerce"; (2) provide guidelines on how the partial exemption applies to motor vehicles, and parts thereof, operated in interstate or foreign commerce; (3) provide that qualifying motor vehicles must be operated by common carriers licensed by the United States Department of Transportation; (4) provide when a motor vehicle is used in interstate or foreign commerce; (5) provide guidelines for those items that do not qualify for the partial exemption; (6) provide guidelines on how the partial exemption applies to railroad rolling stock, and parts thereof, operated in interstate or foreign commerce; (7) provide that qualifying railroad rolling stock must be operated by railroads licensed as

common carriers by the federal Surface Transportation Board; (8) provide the requirements to hold a Sales and Use Tax Direct Pay Permit and to issue a certificate to the selling dealer to receive the partial exemption for qualifying motor vehicles and parts and for qualifying railroad rolling stock and parts at the time of purchase; (9) provide a suggested format of the required certificates; (10) provide guidelines for carriers on how to compute the mileage apportionment factor and tax due under the partial exemption directly to the Department; (11) provide guidelines for the partial exemption in s. 212.08(4)(a)2., F.S., for fuel used in motor vehicles or railroad locomotives operated in interstate or foreign commerce; (12) provide guidelines on how to obtain a refund of tax paid to a selling dealer in excess of the tax due based on the partial exemption directly from the Department, the certificates required to be submitted with an Application for Refund-Sales and Use Tax, and suggested formats of the certificates; (13) provide guidelines for the taxability of damage claims and demurrage charges by carriers; and (14) provide guidelines for recordkeeping requirements to document sales and purchases of items subject to the partial exemption.

The proposed creation of Rule 12A-1.0641, F.A.C. (Sales of Vessels Used in Interstate or Foreign Commerce or for Commercial Fishing Purposes), is to provide guidelines for the partial exemption provided in s. 212.08(8), F.S., for vessels, and parts thereof, used in interstate or foreign commerce or for commercial fishing purposes into a single administrative rule. The new rule section is necessary to: (1) provide guidelines on how the partial exemption applies to vessels, and parts thereof, operated in interstate or foreign commerce or for commercial fishing purposes; (2) define the term "commercial fishing vessels" for purposes of the partial exemption; (3) provide guidelines for vessels and other items that do not qualify for the partial exemption; (4) provide the requirements to hold a Sales and Use Tax Direct Pay Permit and to issue an affidavit to the selling dealer to receive the partial exemption at the time of purchase of qualifying vessels, vessel parts, and other qualifying items; (5) provide a suggested format of the required affidavits; (6) provide guidelines for carriers on how to compute the mileage apportionment factor and tax due under the partial exemption directly to the Department; (7) provide guidelines for the partial exemption in s. 212.08(4)(a)2., F.S., for fuel used in vessels operated in interstate or foreign commerce or for commercial fishing purposes; (8) provide guidelines on how to obtain a refund of tax paid to a selling dealer in excess of the tax due based on the partial exemption directly from the Department, the affidavits and certificates required to be submitted with an Application for Refund-Sales and Use Tax, and suggested formats of the affidavits and certificates; (9) provide guidelines for the taxability of damage claims and demurrage charges by vessel owners and operators;

and (10) provide guidelines for recordkeeping requirements to document sales and purchases of items subject to the partial exemption.

The purpose of the proposed amendments to Rule 12A-1.071, F.A.C. (Rentals, Leases, or Licenses to Use Tangible Personal Property), is to remove requirements for railroad leases and demurrage charges that will be provided in Rule 12A-1.064, F.A.C., as amended, and Rule 12A-1.0641, F.A.C., as created.

The purpose of the proposed amendments to Rule 12A-1.0911, F.A.C., is to: (1) change the title to "Self-Accrual Authorization; Direct Remittance on Behalf of Independent Distributors"; (2) provide guidelines for the self-accrual of sales and use tax, as provided in s. 212.183, F.S.; (3) require persons desiring to self-accrue tax, as provided in s. 212.183, F.S., to be registered with the Department and hold a valid Sales and Use Tax Direct Pay Permit; (4) provide guidelines on how to obtain a Sales and Use Tax Direct Pay Permit, the effective date of the permit, and how to use the permit to make qualified purchases; (5) require holders of direct pay permits to file with the Department an annual report of the tax accrued on purchases by county; (6) require a permit holder to notify the Department when the holder no longer qualifies for the permit; (7) require selling dealers to collect sales tax from purchasers whose permit has expired; (8) provide guidelines to dealers who use independent distributors or independent sellers on how to obtain approval to remit tax on the retail sales of their property by the distributors or sellers directly to the Department; (9) provide that permit holders may not use their permit to make tax-exempt purchases of items for the purposes of resale; (10) provide that tax is due on retail sales of tangible personal property based on the rate imposed in the county where the property is delivered to the independent distributor or independent seller; and (11) require dealers to notify their independent distributors or independent sellers when they are no longer remitting sales tax on their behalf.

The purpose of the proposed amendments to Rule 12A-1.097, F.A.C. (Public Use Forms), is to adopt forms used by the Department in the administration of the self-accrual authority and the distributor level collection program for sales and use tax.

**SUBJECT AREA TO BE ADDRESSED:** The subject of this workshop is the proposed guidelines for the following provisions: (1) tax-exempt sales for export from Florida; (2) tax-exempt sales to nonresident dealers for purposes of resale outside Florida; (3) tax-exempt sales to foreign diplomats, consular employees, and members of their families, as determined by the United States Department of State; (4) registration requirements for purposes of receiving the exemptions under ss. 212.08(4)(a)2., 212.0598, 212.08(8), and 212.08(9), F.S., at the time of purchase; (5) uses of fuel subject to sales tax; (6) the partial exemption for motor vehicles, and parts thereof, and railroad rolling stock, and parts thereof, as provided in s. 212.08(9), F.S.; (7) the partial exemption for

vessels, and parts thereof, as provided in s. 212.08(8), F.S.; (8) how to receive authorization to remit tax directly to the Department, as provided in s. 212.183, F.S.; (9) how dealers may receive authorization to remit sales tax on retail sales of tangible personal property made by their independent distributors or independent sellers, as provided in s. 212.18(3), F.S.; and (10) the proposed adoption of changes to forms used by the Department in the administration of the self-accrual authority and the distributor level collection program for sales and use tax.

**SPECIFIC AUTHORITY:** 212.07(1)(b), 212.17(6), 212.18(2), 212.183, 213.06(1) FS.

**LAW IMPLEMENTED:** 95.091, 120.57(1),(2), 120.60(3), 120.80(14), 206.86(4), 212.02(1),(4),(10)(g),(12),(14),(15)(a),(16),(20), 212.03(1),(2), 212.04, 212.05, 212.0596(1),(2), 212.0598, 212.06(1),(2),(3),(5)(a)1., (b),(8),(11), 212.07(1), 212.08(4),(5)(f),(g),(h),(n),(o),(6),(7),(8),(9),(15), 212.085, 212.096, 212.11(2),(3), 212.12, 212.13(1),(2),(3),(4),(5)(c),(d), 212.16(1),(2), 212.17(6), 212.18(2),(3), 212.183, 212.21(2),(3), 213.053(10), 288.1258, 402.61 FS.

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

**TIME AND DATE:** 10:00 a.m., December 11, 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 at (850)488-0712. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, which may be reached at (800)955-8770 (Voice) or (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: [www.myflorida.com/dor/rules](http://www.myflorida.com/dor/rules).

**THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:**

12A-1.0015 Sales for Export; Sales to Nonresident Dealers and Foreign Diplomats.

(1) SCOPE.

(a) Tangible personal property imported, produced, or manufactured in this state for export, as provided in s. 212.06(5)(a)1., F.S., is not subject to Florida sales tax when the importer, producer, or manufacturer delivers the property to a licensed exporter for export outside Florida or to a

common carrier for shipment outside Florida, or mails the property by United States mail to a destination outside Florida. This rule is intended to provide tax guidelines for the sale of tangible personal property for the purposes of export from Florida.

(b) The provisions of this rule do not apply to sales of aircraft, boats, mobile homes, motor vehicles, or other vehicles. For guidelines on the export of these items from Florida, see Rule 12A-1.007, F.A.C.

#### (2) SALES OF PROPERTY IRREVOCABLY COMMITTED TO EXPORTATION.

(a) A dealer is required to collect tax on sales of tangible personal property when the property is delivered to the purchaser or the purchaser's representative in Florida, whether the disclosed or undisclosed intention of the purchaser is to transport the property to a location outside Florida, or whether the property is actually so transported. Every sale of tangible personal property to a person physically present at the time of sale is presumed to have been delivered in Florida.

(b) When a dealer sells tangible personal property, commits the property to the exportation process at the time of sale, and the exportation process remains continuous and unbroken until the property is exported from Florida, the dealer is not required to collect tax. The intent of the seller and the purchaser to export the property is not sufficient to establish that the property is not subject to tax in Florida. The delivery of the property to a location in Florida for subsequent export from Florida is insufficient to establish documentary evidence that the property sold was irrevocably committed to the exportation process. The following are examples of methods to commit the property to the exportation process at the time of sale:

1. The dealer is required by the terms of the sale contract to deliver the property outside Florida using the dealer's own mode of transportation;

2. The dealer is required by the terms of the sale contract to mail the property by United States mail to a destination located outside Florida; or

3. The dealer is required by the terms of the sale contract to deliver the property to a carrier, licensed customs broker, or forwarding agent for final and certain movement of the property to a destination located outside Florida.

a. The term "carrier" means a person or firm regularly engaged in the business of transporting tangible personal property owned by other persons for compensation. The term "carrier" includes common carriers and contract carriers.

b. The term "licensed customs broker" means a person licensed by the United States customs service to act as a custom house broker.

c. The term "forwarding agent" means a person or firm regularly engaged in the business of preparing property for shipment or arranging for its shipment for compensation.

d. An individual or firm not engaged in the business of receiving tangible personal property owned by other persons and shipping or arranging for shipping for compensation does not become a carrier or forwarding agent by being designated by the purchaser to receive and ship goods to a point outside Florida.

(c) Any dealer who makes tax-exempt sales of tangible personal property for export outside Florida is required to maintain records to document that the property is committed to the exportation process at the time of sale and that the exportation process is continuous and unbroken until the property is exported from Florida. The dealer is required to maintain records that identify the tangible personal property sold and the delivery destination of the property. The documentation must clearly establish that the property was not commingled with the mass of property within Florida. If the purchaser exercises any act of dominion or control that would constitute "use" of the property by the purchaser in Florida within the meaning of that term set forth in s. 212.02(20), F.S., the property was not irrevocably committed to the exportation process. Examples of records to document sales for export to points outside Florida are:

1. Internal delivery orders identifying the property sold and the destination and date of delivery that are supported by receipts of expenses incurred in delivering the property, such as trip tickets or truck logs signed by the person who delivers the property;

2. United States Postal Service parcel post receipts with supporting documentation identifying the property and the destination;

3. Common carriers' receipts, bills of lading, or similar documentation that evidences the delivery destination;

4. Export declaration;

5. Receipts from a licensed customs broker; or

6. Proof of export signed by a customs officer.

(d) A dealer who imports taxable tangible personal property into Florida for exportation from Florida is required to maintain documentation that the imported property was irrevocably committed to the exportation process at the time of importation and that the exportation process was continuous and unbroken while such property was within Florida.

(e) Regardless of the evidence maintained by the dealer to document delivery of the property to a common carrier or a licensed customs broker for shipment to a location outside Florida, or the mailing of the property by the United States mail to a location outside Florida, tax is due when the property is diverted in transit to the purchaser or the purchaser's agent or representative in Florida and such person takes possession in Florida, or when for any other reason the property is not delivered outside Florida.

(3) SALES TO NONRESIDENT DEALERS.

(a) The sale of taxable tangible personal property to a nonresident dealer is exempt when the selling dealer obtains a statement from the nonresident dealer declaring that the tangible personal property will be transported outside Florida by the nonresident dealer for resale and for no other purpose. The statement executed by the nonresident dealer must include the declaration and all of the following information:

- 1. The nonresident dealer’s name and address;
- 2. Evidence of authority to do business in the dealer’s home state or country, such as the nonresident’s business name and address, sales tax registration number, occupational license number, or any other evidence of transacting business in that state or country;
- 3. For nonresident dealers who are not residents of the United States, the dealer’s passport or visa number and arrival-departure card number;
- 4. The following provision: “Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief”; and
- 5. The signature of the purchaser executing the statement.

(b) For purposes of this rule, a “nonresident dealer” is any person who does not hold a valid Florida sales tax certificate of registration and who is authorized in another state or country to make sales of tangible personal property in that state or country.

(c) A selling dealer who makes a sale of taxable tangible personal property to a nonresident dealer is required to obtain the required statement or collect the applicable tax on the sale.

(d) The following is a suggested format of the statement to be completed by the purchaser and presented to the selling dealer:

TANGIBLE PERSONAL PROPERTY  
FOR RESALE BY A NONRESIDENT DEALER

This is to certify that the tangible personal property described below will be transported outside Florida for resale and for no other purpose.

NAME OF SELLING DEALER: \_\_\_\_\_

DEALER’S ADDRESS: \_\_\_\_\_

DEALER’S SALES TAX NO.: \_\_\_\_\_

NAME OF NONRESIDENT DEALER: \_\_\_\_\_

ADDRESS OF NONRESIDENT DEALER: \_\_\_\_\_

HOME STATE’S SALES TAX NO.: \_\_\_\_\_

PASSPORT OR VISA NO.: \_\_\_\_\_

ARRIVAL-DEPARTURE CARD NO.: \_\_\_\_\_

PURCHASER’S EVIDENCE OF AUTHORITY TO DO BUSINESS IN HOME STATE: \_\_\_\_\_

The tangible personal property purchased in Florida on INVOICE NUMBER(S) \_\_\_\_\_, \_\_\_\_\_ or described as follows, is solely for resale outside Florida.

Description of Property: \_\_\_\_\_

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.

\_\_\_\_\_  
Signature of Purchasing Nonresident Dealer                      Date

(4) SALES TO FOREIGN DIPLOMATS, CONSULAR EMPLOYEES, AND MEMBERS OF THEIR FAMILIES.

(a) Sales to foreign diplomats, consular officers, consular employees, and members of their families are entitled to certain sales tax exemptions or limitations determined by the United States Department of State when the United States Department of State has determined that the foreign nation represented has a treaty with the United States that exempts United States diplomats, consular officers, consular employees, and members of their families from the foreign country’s similar state and local sales taxes. Foreign diplomats and consular personnel seeking an exemption from Florida sales tax must personally present to the vendor at the time of purchase a tax exemption card issued to the individual by the United States Department of State. The tax exemption card will set forth the terms of the sales tax exemption to which the individual is entitled and will serve as the seller’s authority to allow the specific sales tax exemption as provided on the card to the named person whose photograph appears on the card.

(b) To document qualified tax-exempt sales to foreign diplomats and consular personnel, the selling dealer must maintain:

- 1. A copy of both sides of the tax exemption card; or
- 2. The following information as shown on the tax exemption card issued to the purchaser: mission name, name of purchaser, date of sale, amount of sale, stripe color code or other indication of the level of exemption, expiration date, the tax exemption number, and the United States Department of State card number.

(c) Questions regarding the diplomatic exemption should be directed in writing to the Florida Department of Revenue, Tax Information Services, Bonham Building, 1379 Blountstown Highway, Tallahassee, Florida 32304 or by telephone to Taxpayer Services at (800)352-3671.

(5) RECORDKEEPING REQUIREMENTS.

(a) Selling dealers must maintain copies of internal delivery orders and supporting documentation, trip tickets, truck log records, United States Postal Service parcel post receipts, bills of lading, receipts from common carriers, export declarations, customs documents, receipts from licensed customs brokers, statements signed by a customs officer, declarations by nonresident dealers, copies of tax-exemption cards issued by the United States Department of State, exemption certificates, and other documentation required under the provisions of this rule until tax imposed by Chapter 212, F.S., may no longer be determined and assessed under s. 95.091(3), F.S.

(b) Electronic storage by the selling dealer of the required certificates and other documentation through use of imaging, microfiche, or other electronic storage media will be sufficient compliance with the provisions of this subsection.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(20), 212.05(1), 212.06(1),(2),(5)(a)1.,(b), 212.12(8), 212.13(1),(2),(3),(4), 212.21(3) FS. History—New

12A-1.038 Consumer’s Certificates of Exemption; Exemption Certificates.

(1) through (4) No change.

(5) SALES EXEMPT BASED ON THE USE OF THE PROPERTY OR SERVICES.

(a) through (c) No change.

(d)1. The following is a suggested format of an exemption certificate to be issued by a purchaser who does not hold a Consumer’s Certificate of Exemption, but who claims that the purchase, rental, lease, or license of the property, or the purchase of the services is for an exempt purpose. Exemption purposes listed on the suggested format that are not relevant to the purchaser may be eliminated from the certificate.

EXEMPTION CERTIFICATE FOR EXEMPTIONS  
BASED ON THE PROPERTY’S USE

This is to certify that the tangible personal property purchased, leased, licensed, or rented, or services purchased, on or after (date) from (Selling Dealer’s Business Name) is purchased, leased, licensed, or rented for the following purpose as checked in the space provided. This is not intended to be an exhaustive list:

( ) Materials, containers, labels, sacks, bags, or similar items intended to accompany a product for sale at other than retail, as provided in s. 212.02(14)(c), F.S., by persons who are not required to be registered under s. 212.18(3), F.S.

~~( ) Export of tangible personal property for use outside this state, as provided in Rule 12A-1.064(1), F.A.C.~~

( ) Incorporation into items of tangible personal property manufactured, produced, compounded, processed, or fabricated for one’s own use, as provided in Rule 12A-1.043, F.A.C.

( ) Printing of a publication exempt under the provisions of s. 212.08(7)(w), F.S.

( ) Items, such as paper and ink, that will be incorporated into and become a component part of a publication exempt under the provisions of s. 212.08(7)(w), F.S.

( ) Educational materials that are used in the classroom and not used for its administration by child care facilities outlined in s. 402.305, F.S., that hold a current license under s. 402.308, F.S., hold a current Gold Seal Qualify Care designation as provided in s. 402.281, F.S., and provide all employees with basic health insurance as defined in s. 627.6699(12), F.S., as provided in s. 212.08(5)(m), F.S.

( ) Motor vehicle rented or leased by a dealer who will provide the motor vehicle at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the dealer, as provided in s. 212.0601(4), F.S.

( ) Other (include description and statutory citation): \_\_\_\_\_

I understand that if I use the property or service for any nonexempt purpose, I must pay tax on the purchase or lease price of the taxable property or service directly to the Department of Revenue.

I understand that if I fraudulently issue this certificate to evade the payment of sales tax I will be liable for payment of the sales tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

The exemption specified by the purchaser may be verified by calling (800)352-3671 ~~1-(800)352-3671~~.

Purchaser’s Name \_\_\_\_\_

Purchaser’s Address \_\_\_\_\_

Name and Title of Purchaser’s Authorized Representative \_\_\_\_\_

Sales and Use Tax Certificate of Registration No. (if applicable) \_\_\_\_\_

By \_\_\_\_\_

(Signature of Purchaser or Authorized Representative)

Title \_\_\_\_\_

(Title – only if purchased by an authorized representative of a business entity)

Date \_\_\_\_\_

2. As provided in subparagraph (a)2. of this subsection, there are other suggested formats for exemption certificates based on the use of the property or services that are provided in other sections of Rule Chapter 12A-1, F.A.C., and in Taxpayer Information Publications (TIPs) issued by the Department. The following is a list of these suggested formats of exemption and the applicable rule section or TIP number that suggests the exemption certificate format. This list is not intended to be an exhaustive list:

a. through d. No change.

e. Export of Tangible Personal Property Irrevocably Committed to the Exportation Process Outside of Florida. Rule 12A-1.0015, F.A.C. Paragraph 12A-1.064(1)(b), F.A.C., provides the documentation required to establish ~~that when~~ that when tangible personal property has been ~~is deemed to be~~ committed to the exportation process.

f. through n. No change.

(6) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 95.091(3), 120.57(1),(2), 120.60(3), 120.80(14), 212.02(14)(c), 212.05(1)(j), 212.06(1)(c), 212.07(1), 212.08(6),(7), 212.085, 212.18(2),(3), 212.21(2) F.S. History—Revised 10-7-68, 6-16-72, Amended 9-28-78, 7-20-82, 4-29-85, Formerly 12A-1.38, Amended 8-10-92, 3-17-93, 9-14-93, 12-13-94, 10-2-01,

12A-1.039 Sales for Resale.

(1) through (3) No change.

(4) SALES OF ALCOHOLIC BEVERAGES AND CERTAIN MOTOR VEHICLES; SALES TO OUT-OF-STATE DEALERS.

(a) through (b) No change.

(c) Guidelines for sales of tangible personal property, except aircraft, boats, mobile homes, motor vehicles, and other vehicles A sale to a nonresident ~~dealers dealer~~ who ~~are~~ is not required to be registered in this state for resale outside Florida ~~are provided in Rule 12A-1.0015 this state is governed by Rule 12A-1.064(2)(b), F.A.C., or Rule 12A-1.007(6), F.A.C.~~ However, blanket resale affidavits from out of state motor vehicle dealers are acceptable in lieu of individual affidavits in Rule 12A-1.007(6), F.A.C., for each sale of each motor vehicle to such out of state motor vehicle dealers.

(d) For sales of aircraft, boats, mobile homes, motor vehicles, and other vehicles, blanket resale affidavits from out-of-state motor vehicle dealers are acceptable in lieu of individual affidavits required under Rule 12A-1.007(6), F.A.C., for each sale of each motor vehicle to such out-of-state motor vehicle dealers.

(5) through (6) No change.

(7) PROVISIONS APPLICABLE TO PERSONS WHO CLAIM CLAIMING THE RESALE EXEMPTION.

(a) through (f) No change.

(g) ~~Purchasers of vessels and parts thereof used to transport persons or property in interstate or foreign commerce must complete the affidavit as required in subsection 12A-1.064(5), F.A.C.~~

(h) through (j) renumbered (g) through (i) No change.

(8) No change.

Specific Authority 212.07(1)(b), 212.17(6), 212.18(2), 213.06 (1) FS. Law Implemented 95.091(3), 212.02(14), 212.05(1)(b),(j), 212.07(1), 212.085, 212.13(5)(c),(d), 212.17(6), 212.18(2),(3), 212.21(2), 213.053(10) FS, ~~ss. 21, 22, 23, 24, Ch. 99-208, L.O.F.~~ History-Revised 10-7-68, 1-7-70, 6-16-72, 9-26-77, Amended 7-20-82, 4-12-84, Formerly 12A-1.39, Amended 1-2-89, 9-14-93, 12-13-94, 10-2-01,\_\_\_\_\_.

12A-1.059 Fuels.

(1) through (2) No change.

(3)(a) Dyed diesel fuel used in a trade or business is subject to use tax. Every person who uses dyed diesel fuel in a trade or business is required to register as a dealer to remit use tax due on the total cost price of the fuel consumed, unless:

1. The diesel fuel is specifically exempt from sales tax; or

2. The dealer selling diesel fuel has elected to collect sales tax on sales to persons who use or consume the diesel fuel in a trade or business.

(b) The following sales or purchases of diesel fuel are exempt from sales and use tax:

1. Fuel upon which the fuel taxes imposed under Chapter 206, F.S., has been paid;

2. Fuel used for agricultural purposes, as provided in Rule 12A-1.087, F.A.C.; and

3. Fuel purchased or stored for purposes of resale.

(4) Diesel fuel used by a licensed common carrier to operate railroad locomotives or vessels used to transport persons or property for hire in interstate or foreign commerce, or used to operate a commercial fishing vessel, is subject to the partial exemption provided in s. 212.08(4)(a)2., F.S. Tax is based on the mileage apportionment factor of the licensed carrier or vessel owner or operators. See Rules 12A-1.064 and 12A-1.0641, F.A.C.

(5) The sale of alternative fuel, as defined in s. 206.86(4), F.S., is subject to sales tax. Alternative fuels include liquefied petroleum gas, compressed natural gas, natural gasoline, butane gas, and propane gas. See Rule 12A-1.087, F.A.C., for alternative fuel used for agricultural purposes.

Specific Authority 212.17(6), 212.18(2), 213.06(1), FS. Law Implemented 206.86(4), 212.05, 212.06(3), 212.08(4),(7)(b),(j), FS. History-Revised 10-7-68, 6-16-72, Amended 7-19-72, 12-11-74, 10-18-78, 7-3-79, 6-3-80, 12-23-80, 8-26-81, 12-31-81, 7-20-82, 10-13-83, Formerly 12A-1.59, Amended 12-13-88, 5-19-93, 9-14-93, 3-20-96, 10-2-01,\_\_\_\_\_.

12A-1.060 Registration.

(1) PERSONS REQUIRED TO REGISTER AS DEALERS.

(a) Every person desiring to engage in or conduct any one of the following businesses in this state as a “dealer” must register with the Department of Revenue and obtain a separate certificate of registration for each place of business:

1. through 13. No change.

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

15. No change.

16. Engaging in any business for which a person desires to obtain self-accrual authorization, as provided in s. 212.183, F.S., or authority to remit sales tax on behalf of its independent distributors or independent sellers, as provided in s. 212.18(3), F.S. See Rule 12A-1.0911, F.A.C.:

17. An air carrier electing to remit tax under the provisions of s. 212.0598, F.S.; or

18. Any person electing to obtain self-accrual authorization in order to pay tax based on the partial exemptions provided in s. 212.08(8) and (9), F.S.

(b) through (5) No change.

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), 8-1-02,\_\_\_\_\_.

(Substantial rewording of Rule 12A-1.064 follows. See Florida Administrative Code for present text.)

12A-1.064 Sales to Licensed Common Carriers Operating Motor Vehicles or Railroad Rolling Stock in Interstate and Foreign Commerce; Sales to Nonresident Dealers; Sales to Diplomats.

(1) SCOPE. This rule is intended to provide guidelines for the partial exemption for railroad rolling stock and parts and motor vehicles and parts provided in s. 212.08(9), F.S., to carriers who transport persons or property for hire in interstate or foreign commerce.

(2) MOTOR VEHICLES.

(a) Motor vehicles used to transport persons or property for hire in interstate or foreign commerce that are operated by any common carrier licensed by the United States Department of Transportation, and parts for such motor vehicles, are subject to the partial exemption provided in s. 212.08(9)(b), F.S. Tax imposed is based on the ratio of Florida highway mileage to total highway mileage traveled by the carrier's motor vehicles that were used in interstate or foreign commerce and that had at least some Florida mileage during the previous fiscal year of the carrier.

(b) A motor vehicle is used by a common carrier in interstate and foreign commerce if it carries persons or property that are moving in interstate or foreign commerce, whether the vehicle travels outside Florida or only within Florida.

(c) Motor vehicles and parts thereof that are purchased by common carriers outside Florida and put into service in interstate commerce outside Florida prior to entering Florida are not subject to Florida sales or use tax.

(d) Charges for the installation of parts that are installed in Florida on motor vehicles used by a licensed common carrier in interstate or foreign commerce are subject to the partial exemption. Repairs and installation of parts on such vehicles performed outside Florida are not subject to tax.

(e) Motor vehicles, and parts thereof, used exclusively in intrastate commerce do not qualify for the partial exemption.

(f)1. Trucking companies or other companies that transport products between Florida and other states that do not operate as licensed common carriers are not entitled to the partial exemption.

2. Vehicles, and parts thereof, used by contract carriers or private carriers that are not licensed by the United States Department of Transportation as common carriers do not qualify for the partial exemption.

(g) Tools and materials and supplies, such as sandpaper, blasting sand, sanding discs, masking tape, rags, and mineral spirits, used in the repair and maintenance of motor vehicles while they are in Florida are subject to tax at the rate imposed by s. 212.05(1), F.S.

(h) Tangible personal property used in the construction, improvement, and repair of a common carrier's real property is subject to tax at the rate imposed by s. 212.05(1), F.S.

(3) RAILROADS.

(a) Railroads that are licensed as common carriers by the United States Surface Transportation Board are subject to tax on rolling stock, and parts thereof, used to transport persons or property for hire in interstate or foreign commerce, as provided in s. 212.08(9)(a), F.S. The tax is based on the ratio of Florida mileage to total mileage traveled by the carrier during the previous fiscal year of the carrier.

(b) The lease or rental of railroad cars by a railroad company for use on its tracks is exempt if the charges are subject to the jurisdiction of the United States Surface Transportation Board and based on hourly, daily, or mileage charges for the presence of a railroad car on the tracks of the railroad company paying the rental charge.

(c) Charges made pursuant to railroad car service agreements are exempt from tax.

(d) Railroad rolling stock, and parts thereof, used by persons are not licensed by the United States Surface Transportation Board as common carriers do not qualify for the partial exemption.

(e) Tools and materials and supplies, such as sandpaper, blasting sand, sanding discs, masking tape, rags, and mineral spirits, used in the repair and maintenance of railroad rolling stock while the rolling stock is in Florida are subject to tax at the rate imposed by s. 212.05(1), F.S.

(f) Tangible personal property used in the construction, improvement, and repair of a railroad company's real property is subject to tax at the rate imposed by s. 212.05(1), F.S.

(4) PARTIAL EXEMPTION AT THE TIME OF PURCHASE.

(a) To obtain the partial exemption provided in s. 212.08(9)(a) or (b), F.S., at the time of purchase, the licensed common carrier purchasing a motor vehicle, or parts thereof, or the licensed railroad carrier purchasing rolling stock, or parts thereof, for use to transport persons or property for hire in interstate or foreign commerce, is required to:

1. Hold a valid sales and use tax certificate of registration; and

2. Hold a valid Sales and Use Tax Direct Pay Permit issued by the Department. To obtain a direct pay permit, the carrier is required to file an Application for Self-Accrual Authority/Direct Pay Permit-Sales and Use Tax (form DR-16A, incorporated by reference in Rule 12A-1.097, F.A.C.) with the Department, as provided in Rule 12A-1.0911, F.A.C.

(b) Any licensed common carrier or licensed railroad carrier that holds a valid direct pay permit may extend a copy of its direct pay permit to the selling dealer at the time of purchase or lease in lieu of paying tax to the selling dealer. Licensed common carriers and licensed railroad carriers are

not authorized to extend a copy of an Annual Resale Certificate to make such purchases tax-exempt. Any licensed common carrier or licensed railroad carrier that extends a copy of its direct pay permit to a selling dealer in lieu of paying tax on property subject to the partial exemption under s. 212.08(9)(a) or (b), F.S., is required to accrue and remit the tax due based on the carrier's mileage apportionment factor directly to the Department.

(5) COMPUTATION OF MILEAGE APPORTIONMENT FACTOR AND TAX DUE.

(a)1. Licensed common carriers are required, at the end of each fiscal year of operation, to determine the ratio of Florida highway mileage to total highway mileage traveled by the carrier's motor vehicles used in interstate or foreign commerce that had at least some Florida highway mileage during the fiscal year. The ratio computed is the carrier's mileage apportionment factor to be applied to purchases during the following fiscal year.

2. Licensed railroad carriers are required, at the end of each fiscal year of operation, to determine the ratio of Florida mileage to total mileage traveled by the carrier's rolling stock during the fiscal year. The ratio computed is the carrier's mileage apportionment factor to be applied to purchases during the following fiscal year.

(b)1. Licensed common carriers operating motor vehicles to transport persons or property for hire in interstate or foreign commerce are required to apply their mileage apportionment factor calculated at the end of the prior fiscal year to the total monthly purchases and leases in Florida of qualified motor vehicles, and parts thereof, during the current fiscal year. Carriers are required to calculate and report tax to the Department on a monthly basis.

2. Licensed railroad carriers operating rolling stock to transport persons or property for hire in interstate or foreign commerce are required to apply their mileage apportionment factor calculated at the end of the prior fiscal year to the total monthly purchases in Florida of qualified rolling stock, and parts thereof, during the current fiscal year. Carriers are required to calculate and report tax to the Department on a monthly basis.

(c) During a licensed common carrier's or a licensed railroad carrier's initial year of operation in Florida, the carrier may estimate the mileage apportionment factor on the basis of the ratio of anticipated Florida mileage to anticipated total miles for that year for motor vehicles or railroad rolling stock that are anticipated to have at least some Florida mileage. At the end of the initial year of operation, the carrier is required to determine the mileage apportionment factor based on the actual Florida mileage and the actual total mileage for the initial year of operation. The carrier is required to pay any additional tax due based on the actual mileage apportionment factor. The tax is due with the carrier's return due for the first month of the carrier's second year of operation in this state.

The carrier may take a credit or apply to the Department for a refund of tax paid, as provided in Rule 12A-1.014, F.A.C., when the tax paid based on the estimated mileage apportionment factor exceeds the tax due based on the actual factor for the initial year of operation.

(6) FUEL USED IN INTERSTATE OR FOREIGN COMMERCE.

(a) Diesel fuel used in vehicles for off-road purposes is subject to the partial exemption provided in s. 212.08(4)(1)2., F.S. Tax is based on the licensed carrier's mileage apportionment factor when:

1. The fuel is placed into a separate tank that is not connected to the fuel supply system of a motor vehicle operated by a licensed common carrier to transport persons or property for hire in interstate or foreign commerce, and the fuel is used to operate a refrigeration unit or other equipment located on the motor vehicle; or

2. Used during idle time for the purpose of running climate control systems and maintaining electrical systems in motor coaches that meet the criteria specified in s. 206.8745(8), F.S., and that are operated by licensed common carriers to transport persons or property for hire in interstate or foreign commerce.

(b) Diesel fuel used in locomotives operated by licensed railroad carriers to transport persons or property for hire in interstate or foreign commerce is subject to the partial exemption provided in s. 212.08(4)(a)2., F.S. Tax is based on the carrier's mileage apportionment factor.

(c)1. Licensed common carriers or licensed railroad carriers who purchase dyed diesel fuel subject to sales tax at the time of purchase may extend a copy of the carrier's Sales and Use Tax Direct Pay Permit to the selling dealer to claim the partial exemption at the time of purchase. Any carrier that extends a permit to purchase the fuel exempt from sales tax is required to remit the sales tax due on the diesel fuel based on the carrier's mileage apportionment factor directly to the Department.

2. Licensed railroad carriers that hold a valid Sales and Use Tax Direct Pay Permit may extend a copy of the permit to the selling dealer to claim the partial exemption at the time of purchase. The carrier is required to remit the tax due on the diesel fuel based on the carrier's mileage apportionment factor directly to the Department.

(7) REFUNDS TO CLAIM THE PARTIAL EXEMPTION.

(a) Licensed common carriers and licensed railroad carriers who do not hold a valid Sales and Use Tax Direct Pay Permit are required to pay tax to the selling dealer at the time of purchase or lease. Carriers entitled to the partial exemption provided in s. 212.08(9), F.S., may obtain a refund of tax paid at the time of purchase or lease, less the amount of tax due under the partial exemption, directly from the Department.

(b) Any licensed common carrier or licensed railroad carrier seeking a refund of tax paid in excess of the tax due under the partial exemption must:

1. Obtain a certified statement from the selling dealer that the tax paid to the dealer has been remitted to the Department. The certified statement is to be submitted to the Department with an Application for Refund-Sales and Use Tax-Sales and Use Tax. A suggested format of a certificate is provided in paragraph (c);

2. File with the Department an Application for Refund-Sales and Use Tax (form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.), including the required statement, that meets the requirements of s. 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C.

a. 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.

b. 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.

(c) The following is a suggested format for a certified statement to be executed by the selling dealer to evidence that tax paid to the selling dealer has been remitted to the Department of Revenue:

CERTIFICATE TAX PAID TO THE  
DEPARTMENT OF REVENUE

The undersigned officer who is duly authorized by \_\_\_\_\_, SELLING DEALER, hereby certifies to \_\_\_\_\_, PURCHASER, it has paid sales tax to the Florida Department of Revenue, totaling the sum of \$ \_\_\_\_\_.

The company further certifies the sales tax for the attached invoice(s) was paid to the State of Florida in the month(s) of \_\_\_\_\_ under sales tax number \_\_\_\_\_.

\_\_\_\_\_  
SIGNATURE OF AUTHORIZED OFFICER

\_\_\_\_\_  
TITLE

(8) DAMAGE CLAIMS AND DEMURRAGE  
CHARGES BY CARRIERS.

(a) The payment of a damage claim by a carrier to any person for damage suffered by merchandise in transit is not a sale of tangible personal property and is not subject to tax, even when the carrier retains the damaged property under settlement of the claim.

(b) The charge for repairs of the damaged property to the carrier is subject to tax.

(c) Any carrier who maintains and operates a salvage depot to sell merchandise damaged in transit and acquired by the carrier in settlement of a damage claim is required to collect sales tax on sales of the damaged property.

(d) Demurrage charges for delays due to loading or unloading cargo beyond the stipulated time are not for the rental or lease of property and are not subject to tax. Example: The charge made to a shipper by a carrier for the retention of a railroad car, trailer, or semi-trailer beyond the scheduled time allowed, due to the delay of loading or unloading goods, is not taxable, irrespective of how the charge is designated.

(9) RECORDKEEPING REQUIREMENTS.

(a) Dealers must maintain copies of direct pay permits, certificates, and any other documentation required under the provisions of this rule until tax imposed by Chapter 212, F.S., may no longer be determined and assessed under s. 95.091(3), F.S.

(b) Electronic storage by the selling dealer of the required certificates and other documentation through use of imaging, microfiche, or other electronic storage media will be sufficient compliance with the provisions of this subsection.

Specific Authority 212.17(6), 212.18(2), 213.06 (1) FS. Law Implemented 212.02(10)(g), 212.05(1), ~~212.0598~~, 212.06(1),(2),(5), 212.08(4)(a)-(8),(9), 212.085, ~~212.12(8)~~, 212.13(1), ~~212.16~~, 212.21(3) FS. History—Revised 10-7-68, 1-7-70, 6-16-72, Amended 12-11-74, 5-23-77, 9-26-77, 10-18-78, 3-30-79, 4-10-79, 3-27-80, 7-20-82, 10-13-83, 8-28-84, Formerly 12A-1.64, Amended 1-2-89, 10-16-89, 7-30-91, 3-20-96, 11-30-97, 7-1-99, 6-19-01, 10-2-01.

12A-1.0641 Sales of Vessels Used in Interstate or Foreign  
Commerce or for Commercial Fishing Purposes.

(1) SCOPE. This rule is intended to provide guidelines for the partial exemption for vessels and vessel parts provided in s. 212.08(8), F.S., to persons who transport persons or property for hire in interstate or foreign commerce or who operate commercial fishing vessels.

(2) VESSELS.

(a) Vessels that are used to transport persons (a) or property for hire in interstate or foreign commerce and commercial fishing vessels are subject to the partial exemption provided in s. 212.08(8), F.S. Tax imposed is based on the ratio of Florida mileage to total mileage traveled by the carrier's vessels that were used in interstate or foreign commerce or for commercial fishing purposes and that had at least some Florida mileage during the previous fiscal year of the carrier.

(b) The mileage of vessels from the territorial limit to port dockside and return into international waters, foreign or coastwise, in the continuous movement of persons or property in interstate or foreign commerce is not considered to be mileage in Florida.

(c) "Commercial fishing vessels" include vessels designed, constructed, and used exclusively for the taking of fish, crayfish, oysters, shrimp, and sponges from the salt and fresh waters for sale. Vessels used for sports or pleasure fishing, such as pleasure fishing boats, charter boats, or party boats, are not commercial fishing vessels.

(d) Vessels used in intrastate commerce exclusively within the territorial waters of Florida do not qualify for the partial exemption.

(e) Vessels that are not operated to transport persons or property for hire in interstate or foreign commerce, even though such vessels may move persons or property across the Florida state line, do not qualify for the partial exemption. For example, a dredge is operated by a company to transport its workmen and equipment between two states. The dredge is not operated to transport persons or property for hire in interstate or foreign commerce, because the company is not receiving compensation for transporting its own workmen. The purchase of the dredge does not qualify for the partial exemption.

(f) Vessels that are not engaged in transporting persons or property for hire in interstate or foreign commerce or for commercial fishing purposes are subject to tax, as provided in s. 212.05, F.S.

### (3) COMPUTATION OF MILEAGE APPORTIONMENT FACTOR AND TAX DUE.

(a) Vessel owners are required, at the end of each fiscal year of operation, to determine the ratio of Florida mileage to total mileage traveled by the owner's vessels operated to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes that had at least some Florida mileage during the fiscal year. The ratio computed is the owner's mileage apportionment factor to be applied to purchases, leases, and rentals of vessels, and parts thereof, subject to the partial exemption under s. 212.08(8), F.S., during the following fiscal year.

(b) Vessel owners are required to apply their mileage apportionment factor calculated at the end of the prior fiscal year to purchases and leases of vessels, and parts thereof, that will be operated exclusively to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes during the current fiscal year. Vessel owners are required to calculate and report tax to the Department on a monthly basis.

(c) During the owner's initial year of operation in Florida, the owner's mileage apportionment factor may be determined on the basis of the ratio of anticipated Florida mileage to anticipated total mileage for that year for the owner's vessels used to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes that are anticipated to have at least some Florida mileage. At the end of the initial year of operation, the owner is required to determine the mileage apportionment factor based on the actual Florida mileage and the actual total mileage for the initial year of operation. The owner is required to pay any additional tax due based on the actual mileage ratio. The tax is due with the owner's return due for the first month of the owner's second

year of operation in this state. The owner may take a credit or apply to the Department for a refund of tax paid, as provided in Rule 12A-1.014, F.A.C., when the tax paid based on the estimated mileage ratio exceeds the tax due based on the actual mileage ratio for the initial year of operation.

### (4) CLAIMING THE EXEMPTION AT THE TIME OF PURCHASE OF A VESSEL.

(a) To claim the exemption at the time of purchase of a vessel that will be used exclusively in non-Florida waters to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes, the vessel owner, or the owner's agent or representative purchasing the vessel, is required to issue an affidavit to the selling dealer. The purchaser executing the affidavit must affirm that the vessel is for the exclusive use designated in s. 212.08(8), F.S., the vessel will be used exclusively in non-Florida waters, and the vessel will not be used for sport or pleasure fishing purposes. Purchasers who purchase vessels solely for this purpose require no registration with the Department. A suggested format of an affidavit is provided in paragraph (d).

(b)1. To claim the partial exemption at the time of purchase, the person purchasing a vessel used in interstate or foreign commerce in both Florida and non-Florida waters or purchasing a commercial fishing vessel is required to:

a. Hold a valid sales and use tax certificate of registration;

b. Hold a valid Sales and Use Tax Direct Pay Permit issued by the Department. To obtain a direct pay permit, the purchaser of the vessel is required to file an Application for Self-Accrual Authority/Direct Pay Permit (form DR-16A) with the Department, as provided in Rule 12A-1.0911, F.A.C.; and

c. Execute an affidavit to the selling dealer affirming that the vessel is for the exclusive use designated in s. 212.08(8), F.S., the vessel will not be used for sport or pleasure fishing purposes, and the basis of the tax due on the purchase of the vessel. A suggested affidavit is provided in paragraph (d).

(c) Any owner who executes an affidavit to purchase a vessel used in both Florida and non-Florida waters for use in transporting persons or property for hire in interstate or foreign commerce or for commercial fishing purposes is required to remit the tax based on the owner's mileage apportionment factor to the Department. The owner is required to remit such tax when the owner's agent or representative has executed an affidavit.

(d) The following is a suggested format of an affidavit to be executed at the time of purchase by the owner or the owner's agent or representative to the dealer selling or leasing the vessel:

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

AFFIDAVIT

VESSELS USED TO TRANSPORT PERSONS OR  
PROPERTY FOR HIRE IN INTERSTATE OR FOREIGN  
COMMERCE OR FOR COMMERCIAL FISHING  
PURPOSES

I, the undersigned individual, hereby swear or affirm that I am the Purchaser or the purchaser's agent or representative authorized to act for the Purchaser in the purchase of the vessel described below. The option checked below applies to this purchase:

( ) The vessel will be used exclusively to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes in non-Florida waters, including the mileage from the territorial limit to port dockside and return into international waters. The vessel will not operate in or on the canals or waterways, or within the territorial waters, of Florida and is not subject to Florida sales tax.

( ) The vessel will be used in transporting persons or property for hire in interstate or foreign commerce or for commercial fishing purposes in both non-Florida waters and in Florida territorial waters. The Purchaser holds a valid Sales and Use Tax Direct Pay Permit issued by the Florida Department of Revenue and must pay tax imposed under s. 212.08(8), F.S., at the rate of \_\_\_\_\_ % of the sales price of the vessel directly to the Florida Department of Revenue. The tax is due on the 1st day of the month following the date of purchase of the designated vessel and is delinquent on the 21st day of that month.

DESCRIPTION OF VESSEL: \_\_\_\_\_  
NAME OF VESSEL: \_\_\_\_\_  
STATE REGISTRATION NUMBER: \_\_\_\_\_  
COAST GUARD DOCUMENTATION NUMBER: \_\_\_\_\_  
MAKE: \_\_\_\_\_ MODEL: \_\_\_\_\_  
YEAR: \_\_\_\_\_ SERIAL NUMBER: \_\_\_\_\_  
SALES PRICE OF DESIGNATED VESSEL: \_\_\_\_\_  
NAME OF SELLING DEALER: \_\_\_\_\_  
SELLING DEALER'S ADDRESS: \_\_\_\_\_  
SELLING DEALER'S SALES TAX NO.: \_\_\_\_\_  
NAME OF VESSEL OWNER: \_\_\_\_\_  
NAME OF PURCHASER: \_\_\_\_\_  
PURCHASER'S TITLE OR DESIGNATION: \_\_\_\_\_  
VESSEL OWNER'S SALES TAX NO.: \_\_\_\_\_

I understand that if I fraudulently issue this Affidavit to evade the payment of Florida sales tax, I will be liable for payment of the tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

Under the penalties of perjury, I swear or affirm that I have read the foregoing Affidavit and that the facts stated herein are true to the best of my knowledge and belief.

SIGNATURE OF PURCHASER OR PURCHASER'S  
AGENT OR REPRESENTATIVE  
\_\_\_\_\_

TITLE OR DESIGNATION  
\_\_\_\_\_

DATE

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ BY \_\_\_\_\_ (name of person making statement).

Personally Known: \_\_\_\_\_

Or Produced Identification: \_\_\_\_\_ Signature of Notary

Type of Identification Produced: \_\_\_\_\_

(Print, Type, or  
Stamp Commissioned  
Name of Notary)

(5) PARTS AND OTHER ITEMS USED ON VESSELS.

(a) Vessel parts and other items purchased or leased in Florida that are appropriate to perform the purposes for which a vessel operated to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes is designed or equipped are subject to the partial exemption provided in s. 212.08(8), F.S. Tax is based on the owner's mileage apportionment factor. Examples of these items are: ice, bait, charts, foul weather gear, ropes, fishing tackle, logs, cooking utensils, and paper supplies.

(b) Charges for repairs or the maintenance of vessels to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes that are performed in Florida are subject to the partial exemption. The tax is based on the owner's mileage apportionment factor.

(c)1. Items purchased or leased in Florida that are not appropriate to perform the purposes for which a vessel is operated, designed, or equipped are subject to tax at the rate imposed by s. 212.05(1), F.S.

2. Tools and materials and supplies, such as sandpaper, blasting sand, sanding discs, masking tape, rags, and mineral spirits, used in the repair and maintenance of a vessel while the vessel is within Florida are subject to tax at the rate imposed by s. 212.05(1), F.S.

(d) Nets, and parts used in the repair of nets, are exempt when used exclusively by commercial fisheries. To claim the exemption, the fishery is required to issue an exemption certificate to the seller. A suggested format of an exemption certificate is provided in Rule 12A-1.087, F.A.C.

(e) The vessel owner, operator, or the owner's agent or representative is required to execute an affidavit to the selling dealer to purchase, lease, or rent vessel parts and other items subject to the partial exemption tax-exempt at the time of purchase. The owner is required to pay tax on vessels parts and other qualified items based on the owner's mileage apportionment factor directly to the Department. The following is a suggested format of the affidavit:

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

AFFIDAVIT

VESSEL PARTS AND ITEMS APPROPRIATE TO CARRY  
OUT THE PURPOSE FOR WHICH A VESSEL IS  
DESIGNED, EQUIPPED, AND USED IN INTERSTATE OR  
FOREIGN COMMERCE OR FOR COMMERCIAL  
FISHING PURPOSES

I, the undersigned individual, hereby swear or affirm that I am the Owner, the operator, or the owner's agent or representative authorized to act for the Owner in the purchase of the items used on the vessel, \_\_\_\_\_, Home Port of \_\_\_\_\_.

I hereby swear or affirm that the named vessel is used to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes and the items purchased from the Seller listed on INVOICE NO(S), \_\_\_\_\_ will be used exclusively on the named vessel and are appropriate to carry out the purpose for which the vessel is designed, equipped, and used.

I hereby swear or affirm that: (The option checked below applies to this purchase.)

The items purchased will be used exclusively on the named vessel in non-Florida waters, including the mileage from the territorial limit to port dockside and return into international waters. The vessel will not be operated in or on the canals or waterways, or within the territorial waters, of Florida. The items purchased are not subject to Florida sales tax.

The items purchased will be used exclusively on the named vessel in both non-Florida waters and in Florida territorial waters. The Owner holds a valid Sales and Use Tax Direct Pay Permit issued by the Florida Department of Revenue and must pay tax imposed under s. 212.08(8), F.S., at the rate of \_\_\_\_\_ % of the sales price of the vessel parts and items directly to the Florida Department of Revenue. The tax is due on the 1st day of the month following the date of purchase of the designated vessel parts and items and is delinquent on the 21st day of that month.

I understand that if I fraudulently issue this Affidavit to evade the payment of Florida sales tax, I will be liable for payment of the tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

Under the penalties of perjury, I swear or affirm that I have read the foregoing Affidavit and that the facts stated herein are true to the best of my knowledge and belief.

\_\_\_\_\_  
SIGNATURE OF VESSEL OWNER, OPERATOR, OR  
OWNER'S AGENT OR REPRESENTATIVE

\_\_\_\_\_  
TITLE OR DESIGNATION

\_\_\_\_\_  
DATE

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ BY \_\_\_\_\_ (name of person making statement).

Personally Known: \_\_\_\_\_

Or Produced Identification: \_\_\_\_\_ Signature of Notary

Type of Identification Produced: \_\_\_\_\_

(Print, Type, or  
Stamp Commissioned  
Name of Notary)

(6) FUEL USED IN INTERSTATE OR FOREIGN  
COMMERCE OR FOR COMMERCIAL FISHING  
PURPOSES.

(a) The sale of dyed diesel fuel to the owner, operator, or the owner's agent or representative of vessels operated to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes is subject to the partial exemption provided in s. 212.08(4)(a)2., F.S. Tax imposed is based on the vessel owner's mileage apportionment factor.

(b) To purchase dyed diesel fuel exempt from sales tax at the time of purchase, the owner, operator, or the owner's agent or representative is required to execute a statement to the selling dealer declaring that the fuel will be used in a vessel operated to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes. The following is a suggested format of a certificate:

CERTIFICATE  
FUEL FOR USE IN A VESSEL OPERATED  
IN INTERSTATE OR FOREIGN COMMERCE  
OR FOR COMMERCIAL FISHING PURPOSES

I, the undersigned individual, as the Owner, Operator, or the Owner's agent or representative of the vessel, \_\_\_\_\_, Home Port of \_\_\_\_\_, certify the following. The option checked below applies to this purchase:

The named vessel is used to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes in non-Florida waters, including the mileage from the territorial limit to port dockside and return into international waters. The fuel will not be used to operate the vessel in or on the canals or waterways, or within the territorial waters, of Florida and is not subject to Florida sales tax.

The named vessel is used to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes in non-Florida waters and in Florida territorial waters. The fuel will be used to operate vessels in interstate or foreign commerce or for commercial fishing purposes and is subject to the partial exemption provided in s. 212.08(4)(a)2., F.S. The Owner holds a valid sales and use tax certificate of registration issued by the Florida Department of Revenue and must pay tax due on the fuel

directly to the Florida Department of Revenue. The tax is due on the 1st day of the month following the date of purchase of the fuel and is delinquent on the 21st day of that month.

I understand that if I fraudulently issue this Certificate to evade the payment of Florida sales tax, I will be liable for payment of the tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

Under the penalties of perjury, I declare that I have read the foregoing Certificate and the facts stated herein are true and correct to the best of my knowledge and belief.

SIGNATURE OF OWNER, OPERATOR, AGENT, OR REPRESENTATIVE

TITLE OR DESIGNATION

DATE

(7) REFUNDS TO CLAIM THE PARTIAL EXEMPTION.

(a) Persons who are entitled to the partial exemption provided in s. 212.08(4)(a)2., F.S., or s. 212.08(8), F.S., may obtain a refund of tax paid at the time of purchase or lease, less the amount of tax due under the partial exemption, directly from the Department.

(b) Persons seeking a refund of tax paid in excess of the tax due under the partial exemption must:

1. Obtain a certified statement from the selling dealer that the tax paid to the dealer has been remitted to the Department. The certified statement is to be submitted to the Department with an Application for Refund-Sales and Use Tax. A suggested format of a certificate is provided in paragraph (c).

2. When seeking a refund of tax paid in excess of the tax due on vessels in excess of the tax due under the partial exemption, execute an affidavit affirming that the designated vessel or designated vessel parts are subject to the partial exemption and the extent of that partial exemption. The affidavit is to be submitted to the Department with an Application for Refund-Sales and Use Tax. Suggested formats of the affidavits are provided in paragraphs (d) and (e).

3. When seeking a refund of sales tax paid on diesel fuel purchased in excess of the tax due under the partial exemption, execute a statement that the fuel purchased qualified for the exemption. The statement is to be submitted to the Department with an Application for Refund-Sales and Use Tax. A suggested format of a certificate is provided in paragraph (f).

4. File with the Department an Application for Refund-Sales and Use Tax (form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.), including any required statement or affidavit, that meets the requirements of s. 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C.

a. 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.

b. 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.

(c) The following is a suggested format for a certified statement to be executed by the selling dealer to evidence that tax paid to the selling dealer has been remitted to the Department of Revenue:

CERTIFICATE

TAX PAID TO THE DEPARTMENT OF REVENUE

The undersigned officer who is duly authorized by \_\_\_\_\_, SELLING DEALER, hereby certifies to \_\_\_\_\_, PURCHASER, it has paid sales tax to the Florida Department of Revenue, totaling the sum of \$ \_\_\_\_\_.

The company further certifies the sales tax for the attached invoice(s) was paid to the State of Florida in the month(s) of \_\_\_\_\_ under sales tax number \_\_\_\_\_.

SIGNATURE OF AUTHORIZED OFFICER

TITLE

(d) The following is a suggested format of an affidavit to be provided to the Department to obtain a refund of tax paid to the selling dealer in excess of the tax due on vessels operated in interstate or foreign commerce or for commercial fishing purposes:

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

AFFIDAVIT

SALES TAX PAID TO THE SELLING DEALER FOR A VESSEL USED IN INTERSTATE OR FOREIGN COMMERCE OR FOR COMMERCIAL FISHING PURPOSES

I, the undersigned individual, hereby swear or affirm that I am the Owner, or the Owner's agent or representative authorized to act for the Owner or Operator in the purchase of the vessel described below. The option checked below applies to this purchase:

( ) The vessel is used exclusively to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes in non-Florida waters, including the mileage from the territorial limit to port dockside and return into international waters. The vessel is not operated in or on the canals or waterways, or within the territorial waters, of Florida and is not subject to Florida sales tax. I have paid Florida sales tax to the Seller and am applying directly to the Florida Department of Revenue to obtain a refund of tax paid in the amount of \$ \_\_\_\_\_ directly from the Florida Department of Revenue.

( ) The vessel is used in transporting persons or property for hire in interstate or foreign commerce or for commercial fishing purposes in both non-Florida waters and in Florida territorial waters. I have paid Florida sales tax to the Seller and am applying directly to the Florida Department of Revenue to obtain a refund of tax paid in excess of the tax due pursuant to s. 212.08(8), F.S. I understand that, as the Purchaser, I must pay tax imposed under s. 212.08(8), F.S., at the rate of % of the sales price of the vessel and am requesting a refund of tax paid in the amount of \$ directly from the Florida Department of Revenue.

DESCRIPTION OF VESSEL USED IN INTERSTATE OR FOREIGN COMMERCE OR FOR COMMERCIAL FISHING PURPOSES:

NAME OF VESSEL:  
STATE REGISTRATION NUMBER:  
COAST GUARD DOCUMENTATION NUMBER:  
MAKE: \_\_\_\_\_ MODEL: \_\_\_\_\_  
YEAR: \_\_\_\_\_ SERIAL NUMBER: \_\_\_\_\_  
SALES PRICE OF DESIGNATED VESSEL: \_\_\_\_\_  
NAME OF SELLING DEALER: \_\_\_\_\_  
SELLING DEALER'S ADDRESS: \_\_\_\_\_  
SELLING DEALER'S SALES TAX NO.: \_\_\_\_\_  
VESSEL OWNER OR OWNER'S AGENT OR REPRESENTATIVE: \_\_\_\_\_

TITLE OR DESIGNATION

DATE

I understand that if I fraudulently issue this Affidavit to evade the payment of Florida sales tax, I will be liable for payment of the tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

Under the penalties of perjury, I swear or affirm that I have read the foregoing Affidavit and that the facts stated herein are true to the best of my knowledge and belief.

SIGNATURE OF OWNER OR OWNER'S AGENT OR REPRESENTATIVE

TITLE OR DESIGNATION

DATE

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ BY \_\_\_\_\_ (name of person making statement).

Personally Known: \_\_\_\_\_  
Or Produced Identification: \_\_\_\_\_ Signature of Notary  
Type of Identification Produced: \_\_\_\_\_

(Print, Type, or Stamp Commissioned Name of Notary)

(e) The following is a suggested format of an affidavit to be provided to the Department to obtain a refund of tax paid to the selling dealer on items appropriate to carry out the purpose for which a vessel is designed, equipped, and used in interstate or foreign commerce or for commercial fishing purposes:

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

AFFIDAVIT

ITEMS APPROPRIATE TO CARRY OUT THE PURPOSE FOR WHICH A VESSEL IS DESIGNED, EQUIPPED, AND USED IN INTERSTATE OR FOREIGN COMMERCE OR FOR COMMERCIAL FISHING PURPOSES

I, the undersigned individual, as the Owner, the Operator, or the Owner's agent or representative of the vessel, \_\_\_\_\_, Home Port of \_\_\_\_\_, hereby swear or affirm that the items purchased from the Seller listed on INVOICE NO(S). are used exclusively on the named vessel and are appropriate to carry out the purpose for which the vessel is designed, equipped, and used to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes. The option checked below applies to the items purchased:

( ) The items purchased are used on the named vessel that is used exclusively to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes in non-Florida waters, including the mileage from the territorial limit to port dockside and return into international waters. The vessel is not operated in or on the canals or waterways, or within the territorial waters, of Florida and is not subject to Florida sales tax. I have paid Florida sales tax to the Seller and am applying directly to the Florida Department of Revenue to obtain a refund of sales tax paid to the Seller.

( ) The items purchased are used on the named vessel that is used in transporting persons or property for hire in interstate or foreign commerce or for commercial fishing purposes in both non-Florida waters and in Florida territorial waters. I have paid Florida sales tax to the Seller and am applying directly to the Florida Department of Revenue to obtain a refund of tax paid in excess of the tax due under to s. 212.08(8), F.S. I understand, that as the Owner or Operator of the vessel, that I must pay tax imposed under s. 212.08(8), F.S., at the rate of \_\_\_\_\_ % of the sales price of the vessel parts and items and am requesting a refund of tax paid in the amount of \$ \_\_\_\_\_ directly from the Florida Department of Revenue.

I understand that if I fraudulently issue this Affidavit to evade the payment of Florida sales tax, I will be liable for payment of the tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

Under the penalties of perjury, I swear or affirm that I have read the foregoing Affidavit and that the facts stated herein are true to the best of my knowledge and belief.

SIGNATURE OF THE VESSEL OWNER OR THE OWNER'S AGENT OR REPRESENTATIVE

TITLE OR DESIGNATION

DATE

Sworn to and subscribed before me this ... day of ... 20 ... BY (name of person making statement).

Personally Known:

Or Produced Identification:

Type of Identification Produced:

Signature of Notary

(Print, Type, or Stamp Commissioned Name of Notary)

(f) The following is a suggested format of a certificate to be provided to the Department to obtain a refund of tax paid to the selling dealer on fuel in excess of the partial exemption provided in s. 212.08(4)(a)2., F.S.:

CERTIFICATE

TAX PAID ON FUEL USED IN A VESSEL OPERATED IN INTERSTATE OR FOREIGN COMMERCE OR FOR COMMERCIAL FISHING PURPOSES

I, the undersigned individual, as the Owner, the Operator, or the Owner's agent or representative of the vessel, ... Home Port of ... hereby certify that the fuel purchased from the Seller listed on INVOICE NO(S) ... is used on the named vessel engaged in transporting persons or property for hire in interstate or foreign commerce or engaged in commercial fishing. The option checked below applies to this purchase of fuel.

( ) The fuel was used in the named vessel used exclusively to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes in non-Florida waters, including the mileage from the territorial limit to port dockside and return into international waters. The fuel was not used to operate the named vessel in or on the canals or waterways, or within territorial waters, of Florida and is not subject to Florida sales tax. I am requesting a refund of tax paid in the amount of \$ ... directly from the Florida Department of Revenue.

( ) The fuel was used in the named vessel used in transporting persons or property for hire in interstate or foreign commerce or for commercial fishing purposes in both non-Florida waters in Florida territorial waters. I have paid Florida sales tax to the Seller and am applying directly to the Florida Department of Revenue to obtain a refund of tax paid in excess of the tax due pursuant to s. 212.08(4)(a)2., F.S. I understand that, as the Purchaser, I must pay tax imposed under s. 212.08(4)(a)2., F.S., at the rate of ... % of the sales

price of the fuel and am requesting a refund of tax paid in the amount of \$ ... directly from the Florida Department of Revenue.

I understand that if I fraudulently issue this Certificate to evade the payment of Florida sales tax, I will be liable for payment of the tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

Under the penalties of perjury, I declare that I have read the foregoing Certificate and that the facts stated herein are true to the best of my knowledge and belief.

SIGNATURE OF OWNER OR OWNER'S AGENT OR REPRESENTATIVE

TITLE OR DESIGNATION

DATE

(8) DAMAGE CLAIMS AND DEMURRAGE CHARGES BY CARRIERS.

(a) The payment of a damage claim by a vessel owner or operator to any person for damage suffered by merchandise in transit is not a sale of tangible personal property and is not subject to tax, even when the carrier retains the damaged property under settlement of the claim.

(b) The charge for repairs of the damaged property to the vessel owner or operator is subject to tax.

(c) Any person who maintains and operates a salvage depot to sell merchandise damaged in transit and acquired in settlement of a damage claim is required to collect sales tax on sales of the damaged property.

(d) Demurrage charges for delays due to loading or unloading cargo beyond the stipulated time are not for the rental or lease of property and are not subject to tax. Example: The charge made to a shipper for the retention of a marine-cargo container beyond the scheduled time allowed, due to the delay of loading or unloading goods, is not taxable, irrespective of how the charge is designated.

(9) RECORDKEEPING REQUIREMENTS.

(a) Dealers must maintain copies of affidavits, direct pay permits, certificates, and any other documentation required under the provisions of this rule until tax imposed by Chapter 212, F.S., may no longer be determined and assessed under s. 95.091(3), F.S.

(b) Electronic storage by the selling dealer of the required affidavits, certificates, and other documentation through use of imaging, microfiche, or other electronic storage media will be sufficient compliance with the provisions of this subsection.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(10)(g), 212.05(1), 212.06(1), 212.08(4)(a),(8), 212.085, 212.13(1), 212.21(3) FS. History--New

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

(1) through (3) No change.

(4)(a) No change.

~~(b) The lease of railroad cars to a railroad company for use on its tracks is exempt, provided the rental charges are subject to the jurisdiction of the United States Interstate Commerce Commission and are based on hourly, daily, or mileage charges, and they are paid by reason of the presence of railroad cars owned by another on the tracks of the taxpayer. Charges made pursuant to railroad car service agreements are also exempt.~~

~~(5) The rental of railroad cars to any lessee, other than a railroad company, is taxable, subject to paragraph (a) of subsection (4) and subsection (7) of this section.~~

(6) through (14) renumbered (5) through (13) No change.

~~(14)(15)(a) No change.~~

~~(b) Demurrage charges are not subject to tax, because such charges are for delays due to loading or unloading cargo, and not for the lease of tangible personal property.~~

~~1. Example: The charge made to a shipper by a carrier for the retention of a railroad car, trailer, semi-trailer, vessel, or marine cargo container beyond the scheduled time allowed, due to the delay of loading or unloading goods, is not taxable, irrespective of how that charge is designated, because such charge is not for the lease of tangible personal property.~~

~~2. Example: The charge for keeping gas cylinders beyond a stipulated time due to loading and unloading of the gas from the cylinders is not taxable. However, the charge made by a lessor to a lessee for the rental of a gas cylinder, whether it is empty or contains gas, is subject to tax. See subsection (38), below.~~

~~(b)(e) No change.~~

(16) through (48) renumbered (15) through (47) No change.

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

(Substantial rewording of Rule 12A-1.0911 follows. See Florida Administrative Code for present text.)

12A-1.0911 Self-Accrual Authorization; Direct Remittance on Behalf of Independent Distributors.

(1) SCOPE OF RULE. This rule is intended to provide guidelines regarding the authority to self-accrue sales and use tax, as provided in s. 212.183, F.S. This rule is also intended to provide guidelines regarding the authority granted by s. 212.18(3)(a), F.S., to dealers that use independent sellers or distributors regarding procedures for remitting tax directly to the Department on the retail sales price charged to the ultimate consumer.

(2) SELF-ACCRUAL AUTHORIZATION.

(a) The Department will authorize dealers to assume the obligation of self-accruing and remitting tax directly to the Department for the following purposes:

1. The apportionment of sales tax by eligible air carriers provided in s. 212.0598, F.S.

2. The partial exemption provided in s. 212.08(9)(a), F.S., for railroad rolling stock, and parts thereof, used to transport persons or property for hire in interstate or foreign commerce and the partial exemption provided in s. 212.08(4)(a)2., F.S., for fuel used in railroad locomotives. See Rule 12A-1.064, F.A.C.

3. The partial exemption provided in s. 212.08(9)(b), F.S., for motor vehicles, and parts thereof, used to transport persons or property for hire in interstate or foreign commerce. See Rule 12A-1.064, F.A.C.

4. The partial exemption provided in s. 212.08(8), F.S., for vessels, and parts thereof, used to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes and the partial exemption provided in s. 212.08(4)(a)2., F.S., for fuel used in such vessels. See Rule 12A-1.0641, F.A.C.

5. The purchase of tangible personal property by dealers who annually purchase in excess of \$10 million of taxable tangible personal property in any county for the dealer's own use.

6. The purchase of tangible personal property by dealers who annually purchase at least \$100,000 of taxable tangible personal property, including maintenance and repairs for the dealer's own use, and the taxable status of the property will be known only when the dealer uses the property. For example, dealers whose normal trade or business characteristics require them to purchase property, maintenance, or repairs that will either become a component part of a product manufactured for sale or will be used and consumed by the dealer will know the taxable status of the property only when the property is used.

7. The purchase of promotional materials, as defined in s. 212.06(11)(b), F.S., by dealers who are unable to determine at the time of purchase whether the promotional materials used to promote subscriptions to publications will be used in Florida or exported from Florida. The seller of subscriptions to publications promoted by the promotional materials must be a registered dealer who is remitting sales tax to the Department on publications sold in Florida. The dealer purchasing and distributing the promotional materials and the seller of the promoted subscriptions to publications sold in Florida are not required to be the same entity.

8. The lease or license to use real property subject to the tax imposed by s. 212.031, F.S., from independent owners or lessors of real property by dealers who are required to remit sales tax electronically under s. 213.755, F.S.

9. The lease of or license to use real property subject to the tax imposed by s. 212.031, F.S., by a dealer who leases or obtains licenses to use real property from a number of independent property owners who, except for the lease or license to the dealer, would not be required to register as dealers engaged in the business of leasing real property.

10. The lease or license to use real property subject to the tax imposed by s. 212.031, F.S., by operators of amusement machines or vending machines who lease or obtain licenses to use real property from property owners or lessors for the purpose of placing and operating an amusement or vending machine.

(b) Any person requesting authority from the Department to self-accrue and remit tax directly to the Department must:

1. File an Application for Self-Accrual Authority/Direct Pay Permit-Sales and Use Tax (form DR-16A, incorporated by reference in Rule 12A-1.097, F.A.C.) with the Department, in the manner provided on the application; and

2. Hold a valid certificate of registration for purposes of reporting sales and use tax. See Rule 12A-1.060, F.A.C.

(c) The Department will issue a Sales and Use Tax Direct Pay Permit to qualified applicants. The effective date of the permit is the postmark date of the application or, when the application is delivered by means other than the United States Postal Service, the date the application is received by the Department.

(d) The Department will specify on each permit the circumstances for which the dealer is authorized to self-accrue and remit sales and use tax directly to the Department. The authorized dealer is required to remit the tax directly to the Department.

(e) Any dealer that holds a valid Sales and Use Tax Direct Pay Permit may extend a copy of its permit to the selling dealer in lieu of paying tax for authorized purchases to the selling dealer.

(f) The expiration date of Sales and Use Tax Direct Pay Permit shall be the end of the month preceding five years from the effective date, if the effective date is on or before the 15th of the month. The expiration date shall be the end of the month that is five years from the effective date, if the effective date is after the 15th of the month. The Department will provide a renewal notice to a permit holder 60 days prior to the expiration date of a permit. Persons that fail to receive a renewal notice or that need more information regarding the notice may contact the Department at:

Central Registration

Florida Department of Revenue

P. O. Box 6480

Tallahassee, Florida 32314-6480.

(g) All dealers who hold a valid Sales and Use Tax Direct Pay Permit are required to file with the Department, by September 30 of each year, a report showing the amount of

total purchases by county for the period from September 1 through August 31 and the amount of use tax self-accrued on such purchases by county. This report should be mailed to:

Florida Department of Revenue

Central Registration

P. O. Box 6480

Tallahassee, Florida 32314-6480.

(h) Holders of Sales and Use Tax Direct Pay Permits must notify the Department within 30 days of any change of circumstances that may affect the dealer's qualification to hold the permit. The permit will be revoked if the Department determines that the holder of a direct pay permit no longer meets the requirements set forth in this rule.

(i) Selling dealers are required to collect tax from customers whose Sales and Use Tax Direct Pay Permit has expired.

(3) DEALERS USING INDEPENDENT SELLERS OR DISTRIBUTORS.

(a) The Department will authorize a dealer that uses independent sellers or independent distributors to sell its merchandise to remit tax on the retail sales price charged to the ultimate consumer in lieu of having the independent seller or independent distributor register as a dealer and remit the tax. To request authorization from the Department, the dealer is required to:

1. Provide documentation of the dealer's financial resources, including certified financial statements;

2. Provide a detailed description of the dealer's information processing system to be used for the tax liabilities assumed and the allocation of discretionary sales surtaxes;

3. Provide a description of the property being sold by the independent sellers or independent distributors; and

4. Agree to report and pay directly to the Department all sales tax liabilities that are transferred from the independent sellers or independent distributors to the dealer and to comply with the provisions of Chapter 212, F.S., and this rule.

(b) A dealer who is authorized by the Department to remit tax for its independent sellers or independent distributors must report and remit the amount of sales tax and surtax due at the rate imposed by the county where delivery of the property to the independent seller or independent distributor occurs.

(c) A dealer authorized to remit tax on behalf of its independent sellers or independent distributors will not be authorized to make tax-exempt purchases under the permit. Such a dealer may use its Annual Resale Certificate to make tax-exempt purchases for the purposes of resale, as provided in Rule 12A-1.039, F.A.C.

(d) When a dealer's authorization to remit tax on behalf of its independent sellers or independent distributors is canceled by the Department or voluntarily terminated by the dealer, that dealer is required to immediately provide written notification

to each independent seller or distributor that it is no longer authorized to remit tax on behalf of its independent sellers or independent distributors.

Specific Authority 212.17(6), 212.18(2),(3), 212.183, 213.06(1) FS. Law Implemented 212.05(1)(e)3., 4., 212.0598, 212.06(11), 212.08(4)(a)2., (8),(9), 212.12(13), 212.18(3), 212.183 FS. History—New 4-7-92, Amended 5-19-93, 9-14-93, 11-16-93, 9-30-99, 10-2-01, \_\_\_\_\_.

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
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(2) through (6) No change.

(7) DR-16A	<u>Application for Self-Accrual Authority/Direct Pay Permit (N.)</u>	_____
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(8) DR-17	<u>Application for Distributor Level Collection Agreement (N.)</u>	_____
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(7) through (20) renumbered (9) through (22) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.0598, 212.08(5)(f),(g),(h),(n),(o),(8),(9),(15), 212.096, 212.12, 212.17(6), 212.18(2),(3), 212.183, 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.:
Sales and Use Tax	12A-1
RULE TITLES:	RULE NOS.:
Public Use Forms	12A-1.097
Enterprise Zone and Florida Neighborhood Revitalization Programs	12A-1.107

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-1.097, F.A.C. (Public Use Forms), is to adopt, by reference, changes to forms used by the Department in the administration of the Florida enterprise zone jobs credit program. This change is necessary to implement s. 25, Chapter 2002-218, L.O.F., which permits the Department to verify credits allowable under the sales and use tax law.

The purpose of the proposed amendments to Rule 12A-1.107, F.A.C. (Enterprise Zone and Florida Neighborhood Revitalization Programs), is to implement s. 23, Chapter 2002-218, L.O.F. This law provides that applications to receive an enterprise zone jobs credit against sales tax due must be submitted to the Department within 7 months after an employee is leased.

SUBJECT AREA TO BE ADDRESSED: The subject of this workshop is: (1) the implementation of the requirement to submit an application to receive an enterprise zone job credit against sales tax due within 7 months after an employee is

leased; and (2) the adoption of changes to forms used by the Department in the administration of the Florida enterprise zone jobs credit program.

SPECIFIC AUTHORITY: 212.08(5)(g)6.,(h)6.,(n)4., (o)4.,(15)(e), 212.11(5)(b), 212.17(6), 212.18(2), 213.06(1) FS.

LAW IMPLEMENTED: 212.08(5)(f),(g),(h),(n),(o),(q),(15), 212.096, 212.11(5), 212.15(2), 212.17(6), 212.18(2),(3), 288.1258 FS.

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

TIME AND DATE: 1:30 p.m., December 11, 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. Persons with hearing or speech impairments may 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: Suzanne Paul, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4733 or e-mail: pauls@dor.state.fl.us.

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

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

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
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(2) through (6)(j) No change.

(k) DR-15ZC	Application for Florida Enterprise Zone Jobs Credit for Sales Tax Effective January 1, 2002 (R. 01/03 N. 01/02)	_____ 08/02
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- (l) DR-15ZCN Instructions for Completing the Sales and Use Tax Return, Form DR-15, when taking the Enterprise Zone Jobs Tax Credit under the New Law (R. 01/03 N. 01/02) \_\_\_\_\_ 08/02
- (m) through (n) No change.
- (7) through (20) No change.

Specific Authority 212.11(5)(b), 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.08(5)(f),(g),(h),(n),(o),(q),(15), 212.096, 212.11(5), 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, \_\_\_\_\_.

12A-1.107 Enterprise Zone and Florida Neighborhood Revitalization Programs.

(1) ENTERPRISE ZONE JOBS CREDIT.

(a) How to Claim the Credit. For employees hired after October 1, 2001, an application that includes the information required by s. 212.096(3)(a)-(f), F.S., effective July 1, 2001, must be filed with the Enterprise Zone Development Agency for the enterprise zone where the business is located to claim the enterprise zone jobs credit. The Department of Revenue prescribes form DR-15ZC, Application for Florida Enterprise Zone Jobs Credit for Sales Tax Effective January 1, 2002 (incorporated by reference in Rule 12A-1.097, F.A.C.), for this purpose.

(b) Forms Required. Taxpayers claiming the enterprise zone jobs credit against sales and use tax for employees hired after October 1, 2001, must use form DR-15ZC to apply for, calculate, and claim the credit with the Department of Revenue. Form DR-15ZC must be certified by the Enterprise Zone Development Agency, attached to a sales and use tax return, and delivered directly to the Department, or postmarked, within six months after the new employee is hired. Beginning May 1, 2002, employers have seven months from the date a qualified leased employee is hired to file the certified DR-15ZC with the Department.

- (2) through (9) No change.

Specific Authority 212.08(5)(g)6.,(h)6.,(n)4.,(o)4.,(15)(e), 212.11(5)(b), 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.08(5)(g),(h),(n),(o),(q),(15), 212.096, 212.11(5), 212.15(2), 212.17(6), 212.18(2) FS. History—New 1-3-96, Amended 6-19-01, 8-1-02, \_\_\_\_\_.

**DEPARTMENT OF REVENUE**

**Miscellaneous Tax**

RULE TITLES:	RULE NOS.:
Payment of Tax	12B-4.001
Public Use Forms	12B-4.003
Refunds	12B-4.004
Conveyances Subject to Tax	12B-4.013
Imposition of Tax	12B-4.031
Issues Subject to Tax	12B-4.032
Issues Not Subject to Tax	12B-4.033

Imposition of Tax	12B-4.051
Computation of Tax; Definitions	12B-4.052
Taxable Documents	12B-4.053
Exempt Transactions	12B-4.054

**PURPOSE AND EFFECT: PART I – ADMINISTRATION**

The purpose of the proposed amendments to Part I (Administration), Chapter 12B-4, F.A.C., is to provide current guidelines regarding the payment and the reporting of the documentary stamp tax and discretionary surtax, to provide current guidelines on how to obtain a refund of documentary stamp tax or discretionary tax, and to adopt, by reference, the forms used by the Department in the administration of the documentary stamp tax and discretionary surtax.

The proposed amendments to Rule 12B-4.001, F.A.C. (Payment of Tax), are necessary to: (1) provide current guidelines for Clerks of the Court who are required to collect, remit, and properly annotate the documentary stamp tax due on the recording of documents; (2) implement s. 2, Chapter 2002-8, L.O.F., which provides that the required notation on a recorded document may be signed, initialed, or stamped with the name or initials of the Clerk of the Court, Comptroller, or designated agent; (3) provide current guidelines to persons who are required to register with the Department to report and remit the documentary stamp tax due directly to the Department; (4) provide current guidelines to persons not required to register as dealers on how to pay the tax directly to the Department; and (5) provide current procedures for Clerks of the Court to utilize when closing out alternate procedure documentary stamp tax accounts and remove provisions regarding shortages and overages that are not supported by statutory authority.

The proposed amendments to Rule 12B-4.003, F.A.C., are necessary to: (1) change the title to “Public Use Forms”; (2) remove the unnecessary and obsolete provisions regarding the applicability of revenue laws relating to the assessment and collection of tax and the issuance of tax warrants; (3) remove obsolete forms and forms that do not meet the definition of a “rule,” as defined in s. 120.52(15), F.S.; and (4) adopt changes to forms used by the Department in the administration of the documentary stamp tax.

The proposed amendments to Rule 12B-4.004, F.A.C. (Refunds), are necessary to: (1) remove obsolete guidelines regarding applications for refunds; (2) provide that an Application for Refund (form DR-26) must be filed with the Department to obtain a refund of documentary stamp tax or discretionary surtax and the requirements for filing such applications; (3) provide that an applicant for a refund of tax must provide documentation that the applicant paid the tax.

**PART II – DEEDS – DOCUMENTARY STAMP TAX AND SURTAX**

The purpose of the proposed amendments to Rule 12B-4.013, F.A.C. (Conveyances Subject to Tax), of Part II (Deeds, Documentary Stamp Tax and Surtax), Chapter 12B-4, F.A.C.,

is to implement the provisions of s. 1, Chapter 2002-8, L.O.F., regarding the computation of documentary stamp tax under s. 201.02, F.S. This law provides that in cases where real property is sold by judicial sale based on an order or final judgment issued in a foreclosure proceeding the tax is to be based solely on the final bid price received for the property at the foreclosure sale.

**PART IV – ORIGINAL ISSUES OF STOCK**

The purpose of the proposed repeal of Part IV (Original Issues of Stock), Chapter 12B-4, F.A.C., is to implement s. 60, Chapter 2002-218, L.O.F., which repeals the imposition of the documentary stamp tax on the original issuance of stock. The proposed repeal of Rule 12B-4.031, F.A.C. (Imposition of the Tax), Rule 12B-4.032, F.A.C. (Issues Subject to Tax), and Rule 12B-4.033, F.A.C. (Issues Not Subject to Tax), is necessary to remove obsolete provisions regarding the taxability of original issues of stock.

**PART VI – NOTES AND WRITTEN OBLIGATIONS TO PAY MONEY**

The purpose of the proposed amendments to Part VI (Notes and Written Obligations to Pay Money), Chapter 12B-4, F.A.C., is to implement s. 9, Chapter 2002-218, L.O.F., which limits the documentary stamp tax to \$2450 on notes and other written obligations to pay money.

The proposed amendments to Rule 12B-4.051, F.A.C. (Imposition of Tax), are necessary to provide guidelines and examples of how the tax limitation does not apply to a mortgage, security agreement, or other lien filed or recorded in Florida.

The proposed amendments to Rule 12B-4.052, F.A.C. (Computation of Tax; Definitions), are necessary to provide guidelines and examples of how the tax limitation applies to tax due on original obligations and all renewals that meet the requirements of s. 201.09(1), F.S.

The proposed amendments to Rule 12B-4.053, F.A.C. (Taxable Documents), are necessary to: (1) provide that the tax limitation applies to demand loans, wrap-around notes, and all other notes or written obligation to pay money executed, delivered, or approved and accepted in Florida; (2) removes obsolete provisions requiring tax on the full amount of the indebtedness of out-of-state notes secured by Florida property; (3) provides guidelines on how the tax limitation applies to in-state notes secured by Florida property; (4) and provides other necessary technical changes.

The proposed amendments to Rule 12B-4.054, F.A.C. (Exempt Transactions), are necessary to provide that the tax limitation applies to a banker’s or trade acceptance.

**SUBJECT AREA TO BE ADDRESSED:** The subject of the rule development workshop is the proposed guidelines regarding: (1) the payment and the reporting of the documentary stamp tax and discretionary surtax; (2) the adoption of forms used by the Department in the administration of the documentary stamp tax and discretionary

surtax; (3) the guidelines on how to obtain a refund of documentary stamp tax or discretionary surtax; (4) the implementation of s. 9, Chapter 2002-218, L.O.F., which limits the documentary stamp tax to \$2450 on notes and other written obligations to pay money; (5) the repeal of the documentary stamp tax previously imposed on the original issues of stock.

**SPECIFIC AUTHORITY:** 201.11, 213.06(1) FS.

**LAW IMPLEMENTED:** 95.091, 116.01, 201.01, 201.02, 201.022, 201.05, 201.08, 201.09, 201.10, 201.11, 201.12, 201.13, 201.132, 201.133, 201.14, 201.21, 201.22, 201.23, 201.24, 213.255, 213.756, 215.26, 219.07, 517.32 FS.

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

**TIME AND DATE:** 1:30 p.m., December 11, 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 at (850)488-0712. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, which can be reached at (800)955-8770 (Voice) and (800)955-8771 (TDD).

The Department’s proposed rules are available on the Department’s web site: [www.myflorida.com/dor/rules](http://www.myflorida.com/dor/rules).

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT WORKSHOP IS:** Tim Phillips, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4724, e-mail: [phillipst@dor.state.fl.us](mailto:phillipst@dor.state.fl.us).

**THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:**

**PART I ADMINISTRATION**

12B-4.001 Payment of Tax.

(1) County Comptroller or Clerk of the Circuit Court.  
~~Payment of Tax:~~

(a) County Comptroller or Clerk of the Circuit Court- Each County Comptroller, or if there ~~is~~ be none, then ~~the~~ Clerk of the Circuit Court of each county, hereinafter referred to as Clerk of the Court, shall collect the tax imposed by Chapter 201, F.S., this chapter on recorded documents, and may collect the tax on unrecorded documents, keeping a journal indicating the amount of tax paid adhering to the requirements outlined in subparagraph 12B-4.001(1)(b)5. Clerks of the Court that elect to collect the tax on unrecorded documents shall meet the requirements of paragraph (b). All taxes collected on behalf of

the state and associated information shall be electronically submitted to the Department, as provided in Section 213.13, F.S., and Rule Chapter 12-28, F.A.C.

~~4. There shall be no collection allowance allowed to the Clerk of the Court when the tax is collected and not remitted in accordance with these rules. Each Clerk shall file a report with the Department certifying the amount of tax due and remit to the Department all tax collected under this procedure as required by Section 201.132, F.S. A report shall be considered timely filed if postmarked on or before such due date. If the due date is a federal or state legal holiday, reports shall be accepted if postmarked on the next succeeding workday. The taxes shall be transmitted to the Department with a report on forms specified by the Department. The taxes imposed by Chapter 201, F.S., shall become state funds at the moment of collection by the Clerk. No Clerk shall be allowed to receive a collection allowance for collecting the tax when the said Clerk fails or refuses to remit the tax collected in accordance with these rules;~~

~~(b)2. A notation is required shall be placed on each document to be recorded or unrecorded by the Clerk of the Court that indicates showing the amount of tax paid and the county where payment is being made. The notation may be signed, initialed, or stamped with the name or initials of the Clerk of the Court, or designated agent thereof.~~

~~3. This procedure shall only be used for documents to be recorded by the Clerk.~~

~~(c)4. The Clerk of the Court shall not accept for recording any document which contains the notation required under authorized by paragraph (2)(f), (b) of this subsection;~~

~~(2)(b) Registered Persons – Unrecorded Documents. Procedure for Paying Tax By Persons, Firms, Corporations, etc. The tax shall be collected and remitted to the Department, except for a document to be recorded.~~

~~(a)4. Any person who has averaged or will average with at least 5 taxable transactions per month is required to shall register with the Department and remit the taxes due directly to the Department for all documents not to be recorded. A separate registration application is required for each location where taxable documents are maintained. Any person with less than 5 transactions per month has the option, but is not required, to register with the Department. Such person shall remit and report the tax to the Department as described in Rule 12B-4.001(1)(b)(3).~~

~~(b)2. Registration with the Department for the purposes of the documentary stamp tax is available by using one of the following methods: Any person with 5 or more taxable transactions per month must file an application for a certificate of registration on Form DR-1DS for each location and the Department shall issue a certificate of registration to such application for the location. "Location" means the place where the taxable documents are kept.~~

~~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."~~

~~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 application.~~

~~3. Any person with 5 or more taxable transactions per month shall file a return with the Department by the 20th of the month following the period for which the tax is due. The tax shall be remitted with the return on a monthly basis when the tax remitted for the four preceding calendar quarters exceeds \$1000, on a quarterly basis when the tax remitted for the four preceding calendar quarters does not exceed \$1000, on a semi-annual basis when the tax remitted for the four preceding calendar quarters does not exceed \$500, and on an annual basis when the tax remitted for the four preceding calendar quarters does not exceed \$100, or as required by the Department. Any person with less than 5 taxable transactions per month shall remit and report the tax not later than the 20th day of each month certifying the amount of tax due for the preceding month, and shall remit the tax due with the return for the preceding month, and shall remit the tax due with the return for the preceding month. Any return and remittance mailed after the 20th day of the month for the tax payable for the period shall subject the person to the penalties imposed by this chapter. A return is timely filed if postmarked on or before the 20th day of the month. If the 20th day of the month falls on a Saturday, Sunday, or a federal or state legal holiday, returns shall be accepted if postmarked on the next succeeding workday. Returns and report forms shall be furnished by the Department.~~

~~(c)4. Each application submitted to the Department must contain sufficient information to facilitate the processing of the application. All persons required to remit the tax shall be subject to audit, shall make their records available for ready inspection by the Department, and shall post at their own expense a bond as may be required by the Department.~~

~~(d) Any person registered with the Department for documentary stamp tax purposes is required to file a Documentary Stamp Tax Return for Registered Taxpayers (form DR-225, incorporated by reference in Rule 12B-4.003, F.A.C.) and remit the tax due.~~

~~(e)5. Any person registered shall keep a journal, or other account book or record of original entry, maintaining showing a listing of all documents executed and delivered. The journal shall show a daily listing of each document, indicating every document transaction, or a listing as required by the Department, and shall show the amount, and of each document, whether the document is taxable or not. When If the document is taxable, the amount of tax due shall be indicated~~

for each document. ~~When~~ If the document is not taxable, the journal must indicate ~~shall disclose~~ the reason for the exemption.

~~(f)6-~~ The following notation or similar language, along with the amount of tax and the certificate of registration number, is required to be made ~~shall be made~~ on each document requiring tax under this procedure: "Florida documentary stamp tax required by law in the amount of \$\_\_\_\_\_ has been paid or will be paid directly to the Department of Revenue. Certificate of Registration No. \_\_\_\_\_." ~~For persons filing returns who have less than five taxable transactions per month and have opted not to register, no registration number is required on such documents.~~

(3) Unregistered Persons.

(a) Any person engaged in an average of less than 5 taxable transactions per month is not required to register with the Department, but may elect to register to report documentary stamp tax due.

(b) Any person who is not required to register and has not elected to register is required to file a Documentary Stamp Tax Return For Nonregistered Taxpayers' Unrecorded Documents (form DR-228, incorporated by reference in Rule 12B-4.003, F.A.C.) and remit tax due.

(4) Payment and Return Due Dates.

(a) For monthly filers, payments for documentary stamp tax and the associated return certifying the amount of tax due for the preceding month must either reach the Department or be postmarked on or before the 20th day of the month following the transaction to avoid penalty and interest for late filing. When the 20th day falls on a Saturday, Sunday, or legal holiday, payments accompanied with returns will be accepted as timely if postmarked 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 Section 7503 of the Internal Revenue Code of 1986, as amended. A "legal holiday" pursuant to Section 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, semiannual, or annual reporting is authorized by the Department pursuant to Section 201.133(8), F.S., the tax and associated return is due no later than the 20th day of the month following the authorized reporting period and becomes delinquent on the 21st day of that month.

(4)(2) Procedures to Follow in Closing Out Alternate Procedure Stamp Accounts of Clerks:

~~(a) Closing Account—The following procedure will be used to close an alternate procedures account:~~

~~(a)4-~~ The Clerk's receipts will be reconciled with remittances of tax to the Department.

~~(b)2-~~ The Clerk's receipts will be reconciled with tax affixed to recorded documents.

~~(c)3-~~ The amount of tax due, less the collection allowance, will be collected from the Clerk by the Department.

~~(b) Shortage or Overage—If for any reason there is a shortage in the documentary stamp account, the outgoing Clerk is liable for the difference. If there is an overage in the documentary stamp account, the overage belongs to the county.~~

Specific Authority 201.11, 213.06(1) FS. Law Implemented 116.01, 201.01, 201.08, 201.09, 201.11, 201.12, 201.13, 201.132, 201.133, 201.14, 213.756, 219.07 FS. History—Revised 8-18-73, Formerly 12A-4.01, Amended 2-21-77, 12-3-81, Formerly 12B-4.01, Amended 12-5-89, 2-16-93, 12-30-97, \_\_\_\_\_.

12B-4.003 Public Use Assessment, Collection and Forms.

~~(1) Other Tax Laws Applicable: All revenue laws relating to the assessment and collection of taxes are extended to and made a part of Chapter 201, F.S., so far as applicable, for the purpose of collecting stamp taxes omitted through mistake or fraud from any instrument, document, paper, or writing named therein.~~

~~(2) Issuance of Tax Warrant: If any taxes or penalties imposed by Chapter 201, F.S., shall remain due and unpaid, the Department shall issue a warrant for the full amount of the tax due or estimated to be due, with the interest, penalties, and cost of collection, directed to all and singular the sheriffs of the state, and mail the warrant to the Clerk of Circuit Court of the county where any property of the taxpayer is located. Upon receipt of the warrant, the Clerk of Circuit Court, shall record it, and thereupon the amount of the warrant shall become a lien on any real or personal property of the taxpayer in the same manner as a recorded judgment. The Department may issue a tax execution to enforce the collection of taxes imposed and deliver it to any sheriff. The sheriff shall thereupon proceed in the same manner as prescribed by law for executions and shall be entitled to the same fees for his services in executing the warrant to be collected. Upon payment of the execution, warrant, or judgment, the Department shall satisfy the lien of record within thirty days.~~

~~(1)(3)~~ The following public-use forms and instructions are employed by the Department of Revenue in its administration of the documentary stamp tax dealings with the public, and are hereby incorporated in this rule by reference. 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 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
(a) DR-1DS	Application for Certificate of Registration to Collect Documentary Stamp Tax (r. 3/97)	3/97
(b) DR-11DS	Documentary Stamp Tax Certificate of Registration (r. 2/97)	3/97
(c) DR-208	Notice to Creditor of Delinquent Tax (r. 5/79)	5/79
(d) DR-214	Notice of Intent to Make Documentary Stamp Tax Audit Changes (r. 7/93)	10/93
(2)(e) DR-219	Return for Transfers of Interest in Florida Real Property (r. 7/98 6/94)	6/94
(f) DR-220	Request for Information on Instruments in Official Record (r. 6/93)	6/93
(3)(g) DR-225	Documentary Stamp Tax Return For Registered Taxpayers' Unrecorded Documents (r. 7/97)	3/97
(h) DR-225B	Documentary Stamp Tax Return For Registered Taxpayers' Unrecorded Documents (r. 10/97)	3/97
(i) DR-226	Documentary Stamp Tax Return For Clerk of the Court (r. 10/97)	3/97
(j) DR-226D	Documentary Stamp Tax and Discretionary Surtax Return For Clerk of the Court (r. 10/97)	3/97
(4)(k) DR-228	Documentary Stamp Tax Return For Nonregistered Taxpayers' Unrecorded Documents (r. n. 10/97)	3/97
(l) DR-234	Documentary Stamp Tax Statement of Payment (r. 08/92)	2/93

Specific Authority 201.11, 213.06(1) FS. Law Implemented 201.022, 201.133 201.53, 201.16 FS. History-Revised 8-18-73, Formerly 12A-4.03, Amended 9-26-77, 12-11-78, Formerly 12B-4.03, Amended 12-5-89, 2-16-93, 10-20-93, 12-30-97, \_\_\_\_\_.

12B-4.004 Refunds.

(1) Any person who has overpaid documentary stamp tax or discretionary surtax may seek a refund by filing an Application for Refund (form DR-26, incorporated by reference in Rule 12-26.008, F.A.C.) with the Department. Form DR-26 must be filed in accordance with the timing provisions of Section 215.26, F.S., and must meet the requirements of Sections 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C. The State Comptroller may refund to the person who paid same, or his heirs, personal representatives or assigns, any monies paid into the state treasury which constitute:

(a) 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. An overpayment of any tax, license or account due;

(b) 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. A payment where no tax, license, or account is due; and

(c) Any payment made into the state treasury in error.

~~(2) Application for refunds as provided by this section shall be filed with the Comptroller within three years after the right to such refund shall have accrued else such a right shall be barred. An application for refund for tax paid after September 30, 1994, must be filed with the Comptroller within five years after the date the tax is paid. Applications shall be on a form to be prescribed by the Comptroller and shall be sworn to and supplemented with such additional proof as is necessary to establish such claim. One (1) photocopy of all documents on which the tax has been paid must be filed with the application. In the case of duplicate payment, photocopies of both documents must be submitted.~~

~~(3) Applications for refund should be filed in duplicate.~~

~~(4) All photocopies of documents must show the tax paid.~~

~~(5) Documentary stamp tax and documentary surtax refunds are paid from separate funds, therefore, separate refund claims must be submitted for documentary stamp tax and documentary surtax.~~

~~(2)(6) When an There seems to be a legal presumption that taxes paid under Chapter 201, F.S., were paid by the maker; therefore, when the application for refund of taxes paid is made by a person other than the maker of the document or instrument, the burden is on such applicant must provide documentation that the tax was paid by the applicant to prove as a fact that he actually paid the tax. (Attorney General Opinion 065-76, July 22, 1965, 1965-66 Biennial Report, Page 105)~~

Specific Authority 201.11, 213.06(1) FS. Law Implemented 95.091, 213.255, 201, 215.26, Chapter 94-353, L.O.F. FS. History-Revised 8-18-73, Formerly 12A-4.04, Amended 12-26-77, Formerly 12B-4.04, Amended 12-30-97, \_\_\_\_\_.

PART II DEEDS – DOCUMENTARY STAMP TAX AND SURTAX

12B-4.013 Conveyances Subject to Tax.

(1) through (2) No change.

(3)(a) ~~Clerk of the Circuit Court, Master, Sheriff, A~~ Conveyance by a master in chancery, a sheriff, or a clerk of ~~the circuit court,~~ for realty sold under foreclosure or execution is subject to tax. The tax is computed on the amount of the highest and best bid received for the property at the foreclosure sale. The Clerk of the Court is required to collect the tax from the highest bidder when the Certificate of Title is recorded consideration paid, which includes any mortgages or liens that are not removed from the foreclosed property.

~~(b) The However, such~~ documentary stamp taxes cannot reduce the claim of the mortgagee when the mortgagee is an agent of the federal government. ~~The tax being the obligation of the mortgagee, he~~ is liable for the payment of the tax from any funds ~~paid to the mortgagor owed and payable to him, if there are any funds payable to him~~ after the payment of prior claims of, or in connection with, the foreclosure. (1960 Op. Att’y Gen. Fla. 060-125 (July 29, 1960) Cross Reference subsection (13) of Rule 12B-4.014(13), F.A.C.

(4) through (32) No change.

Specific Authority 201.11, 213.06(1) FS. Law Implemented 201.01, 201.02 FS. History–Revised 8-18-73, Formerly 12A-4.13, Amended 12-11-74, 2-21-77, 5-23-77, 12-26-77, 7-3-79, 9-16-79, 11-29-79, 3-27-80, 12-23-80, 12-30-82, Formerly 12B-4.13, Amended 12-5-89, 6-4-90, 2-13-91, 2-16-93, 10-18-94, 12-30-97, 7-28-98, 1-4-01, \_\_\_\_\_.

PART IV ORIGINAL ISSUES OF STOCK

12B-4.031 Imposition of Tax.

Specific Authority 201.11, 213.06(1) FS. Law Implemented 201.05 FS. History–Revised 8-18-73, Formerly 12A-4.31, 12B-4.31, Amended 12-5-89, 2-13-91, 2-16-93, Repealed.

12B-4.032 Issues Subject to Tax.

Specific Authority 201.11 FS. Law Implemented 201.05 FS. History–Revised 8-18-73, Formerly 12A-4.32, Formerly 12B-4.32, Amended 12-5-89, Repealed.

12B-4.033 Issues Not Subject to Tax.

Specific Authority 201.11 FS. Law Implemented 201.05 FS. History–Revised 8-18-73, Formerly 12A-4.33, 12B-4.33, Amended 12-5-89, Repealed.

PART VI NOTES AND WRITTEN OBLIGATIONS TO PAY MONEY

12B-4.051 Imposition of Tax.

(1) A tax is imposed on promissory notes, non-negotiable notes, written obligations to pay money, assignments of salaries, wages, or other compensation, which are made, executed, delivered, sold, transferred, or assigned in the state. A renewal note, as defined in s. 201.08(5), F.S., is also taxable unless it qualifies for the exemption provided for under s. 201.09(1), F.S. The rate of tax is 35 cents on each \$100 or fraction thereof of the indebtedness or obligation evidenced by the document. The tax on any document described in this paragraph shall not exceed \$2450.

Cross Reference – Paragraph (12)(e) of Rule 12B-4.052, F.A.C.

(2) Mortgages ~~that which~~ incorporate the certificate of indebtedness, not otherwise shown in separate instruments, are taxable. Furthermore, a mortgage, trust deed, security agreement, or other evidence of indebtedness filed or recorded in this state which secures a promissory note or written obligation to pay money at the time of recordation is also taxable. A notation shall be made on the promissory note or written obligation to pay money, at the time of recordation, that the proper tax, and the amount thereof, ~~has have~~ been paid on

the mortgage, trust deed, security agreement, or other evidence of indebtedness. A renewal mortgage, trust deed, security agreement, or other evidence of indebtedness, as defined in s. 201.08(5), F.S., is also taxable unless it qualifies for the exemption provided under ss. 201.09(2) and 201.091, F.S. The rate of tax is 35 cents on each \$100 or fraction thereof of the indebtedness or obligation evidenced thereby. The \$2450 tax limit placed on a note or other written obligation to pay money, executed in Florida or approved and accepted in Florida, does not apply to a mortgage, security agreement, or other lien filed or recorded in Florida. A mortgage, security agreement, or other lien filed or recorded in Florida is subject to documentary stamp tax on the full amount of the obligation secured thereby. Example: A term obligation of \$1,000,000 was executed in Florida on July 1, 2002. A mortgage securing the full amount of the obligation was recorded in Florida on that same date. Documentary stamp tax in the amount of \$3500 was due on the mortgage at the time of recordation.

Cross Reference – Paragraph (12)(e) of Rule 12B-4.052, F.A.C.

Specific Authority 201.11, 213.06(1) FS. Law Implemented 201.08 FS. History–Revised 8-18-73, Formerly 12A-4.51, Amended 8-8-78, 11-29-79, Formerly 12B-4.51, Amended 12-5-89, 2-13-91, 2-16-93, 12-30-97, 7-28-98, \_\_\_\_\_.

12B-4.052 Computation of Tax; Definitions.

(1) through (11) No change.

(12) Renewals: Each renewal, as defined in s. 201.08(5), F.S., of a written obligation to pay money, or of a mortgage or other security agreement, is taxable, unless it satisfies the requirements of s. 201.09(1), F.S.

(a) Except as provided in paragraph ~~(f)(e)~~, a written agreement, such as a loan agreement, that alters or modifies the contract or obligation of an original promissory note, mortgage, trust deed, security agreement, or other evidence of indebtedness, by adding one or more obligors, increasing the principal balance, changing the interest rate, changing the maturity date, changing the payment terms, or assuming the terms of the original contract or obligation, is a renewal of the original note, mortgage, trust deed, security agreement, or other evidence of indebtedness. A renewal that does not add obligor(s) and merely changes the interest rate, the maturity date, or the payment terms is not subject to tax, provided tax was paid on the original document and the original document is attached to the renewal.

(b) A renewal of a term obligation is subject to tax on the amount of the increase of the unpaid principal balance, with a maximum tax due of \$2450 on the aggregate of the original obligation and all renewals thereof that satisfy the requirements of Section 201.09(1), F.S. A term loan with periodic disbursements, such as a construction loan, may be renewed for the undisbursed amount, together with the unpaid balance of the amount that was previously disbursed, without payment of additional tax.

Cross Reference – Paragraph (e) of this subsection.

(c) A renewal of a revolving obligation is subject to tax on the amount of the increase over the original face amount of the original obligation with a maximum tax due of \$2450 on the aggregate of the original obligation and all renewals thereof that satisfy the requirements of Section 201.09(1), F.S.

Cross Reference – Paragraph (e) of this subsection.

(d) Under paragraphs (b) and (c), a separate side note is not required. The principal balance or original face amount can be indicated by a notation on the renewal document, by reference to the document being renewed, or by other proof retained by the borrower(s) or lender.

(e) The maximum tax due on an original obligation and all renewals thereof that satisfy the requirements of Section 201.09(1), F.S., is \$2450. An obligation upon which the maximum tax due of \$2450 was paid may be renewed, so long as the requirements of s. 201.09(1), F.S., are met, without additional tax assessed. The \$2450 tax limitation does not apply to a mortgage, security agreement, or other lien filed or recorded in Florida.

1. Example: The proper amount of tax of \$2450 was paid on a term obligation of \$1,000,000 that was executed in Florida on July 1, 2002, and was not secured by a mortgage, security agreement, or other lien filed or recorded in Florida. On August 1, 2002, the obligation was renewed, meeting the requirements of Section 201.09(1), F.S., and providing for a \$500,000 increase of the unpaid principal balance. No additional tax was due on the renewal, since the maximum aggregate tax of \$2450 was paid on the original obligation. Each renewal thereafter is not subject to additional tax, so long as each renewal meets the requirements of Section 201.09(1), F.S.

2. Example: The proper amount of tax of \$1750 was paid on a revolving obligation of \$500,000, that was executed in Florida on July 1, 2002, and was not secured by a mortgage, security agreement, or other lien filed or recorded in Florida. On August 1, 2002, the obligation was renewed, meeting the requirements of Section 201.09(1), F.S., and providing for a \$500,000 increase above the original face amount of the original obligation. Additional tax of \$700 was due on the renewal, bringing the total tax paid on the original obligation and all renewals thereof to the maximum aggregate amount of \$2450. Each renewal thereafter is not subject to additional tax, so long as each renewal meets the requirements of Section 201.09(1), F.S.

3. Example: The proper amount of tax of \$1750 was paid on a revolving obligation of \$500,000, that was executed in Florida on July 1, 2002, and was not secured by a mortgage or other lien filed or recorded in Florida. On August 1, 2002, the obligation was renewed, meeting the requirements of Section 201.09(1), F.S., and providing for a \$100,000 increase above

the original face amount of the original obligation. Additional tax of \$350 was due on the renewal, bringing the aggregate tax paid on the original obligation and this renewal to \$2100. Additional tax of \$350 will be due on any renewal or renewals thereafter, where the amount of the increase or increases equals or exceeds \$100,000 (the amount of the increase or increases required to bring the aggregate tax to \$2450).

4. Example: The proper amount of tax of \$2450 was paid on a term obligation of \$700,000 that was executed in Florida on July 1, 2002, and was secured by a mortgage recorded in Florida. On August 1, 2002, the obligation was renewed, meeting the requirements of Section 201.09(1), F.S., and providing for a \$500,000 increase of the unpaid principal balance. The mortgage was spread to secure the renewal. Additional tax of \$1750 was due on the mortgage spreader, since there is no limit on the amount of tax due on a mortgage.

~~(f)(e)~~ Notwithstanding paragraphs (a) and (b) and (c) above:

1. A renewal note that adds one or more obligors is subject to tax on the full amount of the obligation. The maximum tax due on a renewal that adds one or more obligors is \$2450.

2. An assumption of an existing obligation is subject to tax on the full amount of the note assumed. The maximum tax due on an assumption of an existing obligation is \$2450.

3. A renewal note is subject to tax on the full amount of the obligation, with a maximum tax due of \$2450, if the proper tax was not paid on the instrument being renewed.

a. A renewal of a promissory note is subject to tax on the full amount of the obligation, with a maximum tax due of \$2450, if the note being renewed is not attached with cancelled stamps or an appropriate notation showing full payment of tax imposed by law.

b. A renewal mortgage or other security document shall state the official book and page number of the original mortgage or other security document being renewed which evidences prior payment in full of stamp tax due, or shall have attached to it for recording the original note or a copy thereof with evidence of proper stamp tax paid. Unless this evidence is present, the renewal mortgage is subject to tax on the full amount of the obligation.

4. If the original note and mortgage is satisfied, an instrument that might otherwise appear to be a renewal of the original note and mortgage is taxable on the full amount of the obligation. (In this case, the instrument represents a new obligation.)

(f) through (g) renumbered (g) through (h) No change.

(13) No change.

Specific Authority 201.11, 213.06(1) FS. Law Implemented 201.08, 201.09 FS. History—Revised 8-18-73, Formerly 12A-4.52, Amended 8-8-78, 3-12-79, 2-3-80, 3-30-81, 8-29-84, Formerly 12B-4.52, Amended 12-5-89, 2-13-91, 10-18-94, 12-30-97, 7-28-98, 1-4-01,\_\_\_\_\_.

12B-4.053 Taxable Documents.

(1) through (10) No change.

(11) Demand Loans: Forms used by banks in making so-called "demand loans" which contain a written obligation to pay money are subject to the documentary stamp tax based upon the full amount of the demand loan, with a maximum tax due of \$2450. (1941 Op. Att'y. Gen. Fla. 041-677 (Dec. 5, 1941))

(12) through (19) No change.

(20) Revolving Charge Account Agreements: Purchases made under a revolving charge account agreement where sales slips made in connection with the agreement contain a written obligation to pay money are taxable under s. 201.08(2), F.S., except those activated with the use of a credit card, charge card, or debit card. (1971 Op. Att'y. Gen. Fla. 071-116 (May 24, 1971)) Cross Reference – subsection (11) of Rule 12B-4.054(11), F.A.C.

(21) through (24) No change.

(25) "Wrap-Around" Notes: Documentary stamp tax is due upon the face amount of a note (with a maximum tax due of \$2450), under which a maker obligates himself to pay a sum certain, even though the payee obligates himself to use such payments to pay off a prior note, (Department of Revenue v. McCoy Motel, Inc., 302 So. 2d 440 (Fla. 1st DCA 1974))

(26) Acceptances: Acceptances are obligations to pay according to the tenor of the document and are taxable under s. 201.08(1)(a), F.S. (1931 Op. Att'y. Gen. Fla. 1931-32 Biennial Report, Page 831 (Sept. 24, 1931); 1931 Op. Att'y. Gen. Fla. 1931-32 Biennial Report, Page 845 (Oct. 15, 1931)) Cross Reference – Subsections (7) and (16) 12B-4.053(7) and 12B-4.053(16), F.A.C.

(27) No change.

(28) Note Executed and Delivered: All notes or written obligations to pay money delivered to the lender, such as including, but not limited to, master notes, and notes drawn in connection with a line of credit, letter of credit, bail bond, or otherwise, executed in Florida or approved and accepted in Florida, are subject to Florida documentary stamp tax. Tax is due based on the face amount of the note, with a maximum tax due of \$2450, whether or not funds are advanced at time of delivery. If the note is secured by a recorded mortgage, tax shall be paid on the mortgage at time of recording and a notation made on the note that tax has been paid on the mortgage. There \$2450 tax limit placed on a note or other written obligation to pay money, executed in Florida or approved and accepted in Florida, does not apply to a mortgage, security agreement, or other lien filed or recorded in Florida. Renewals are also taxable unless exempted under s. 201.09, F.S.

Cross Reference – Subsection (2) of Rule 12B-4.051 and Paragraph (12)(e) of Rule 12B-4.052, F.A.C.

(29) through (30) No change.

(31) Out-of-State Notes-Secured by Florida Mortgage: A mortgage recorded in this state encumbering Florida real or personal property, which is security for an out-of-state note is subject to tax as follows:

(a) Indebtedness Secured: The tax is based upon the full amount of the indebtedness secured, whether the indebtedness is contingent or not, unless paragraphs (b) and (c) of this rule apply. See also s. 201.08(5) and ~~s. 201.08(7)~~, F.S.

(b) Secured by Multi-State Mortgage: When a note is made in another state and is secured by a multi-state mortgage recorded in Florida which describes and pledges the Florida property and the out-of-state property, tax ~~is will be~~ due on the mortgage when filed or recorded in Florida based upon the percentage of indebtedness which the value of the mortgaged property located in Florida bears to the total value of all the mortgaged property. However, where the mortgage limits recovery to less than the amount of the indebtedness secured, the tax is due on the amount to which recovery is limited. The mortgage shall state the value of the property in Florida and the other state(s); and also the percentage of the Florida property in relation to the total property. ~~When a note is made in Florida and is secured by a multi-state mortgage recorded in Florida, the mortgage will be subject to tax based upon the full amount of the indebtedness stated in the mortgage, since a note executed in Florida is fully taxable.~~

COMPUTATION OF TAX:

$$\frac{\text{Value of Florida property}}{\text{Total value of all property}} \times \text{Indebtedness} = \text{Amount}$$

Example:

Value of Florida property	\$100,000(1)
Value of out-of-state property	\$900,000
Total Value of all property	\$1,000,000(2)
Amount of Indebtedness:	\$1,000,000(3)

$$(1) \$100,000 / (2) \$1,000,000 \times (3) \$1,000,000 = \$100,000*$$

\*Tax would be calculated on \$100,000.

(c) Secured by Florida Mortgage only: Where a mortgage describing and pledging only the Florida property is recorded in Florida, which only partially secures an out-of-state loan, and the loan is also secured by a mortgage(s) on out-of-state property, only a pro-rata ~~prorata~~ portion of the indebtedness secured by the Florida mortgage is taxable. The tax will be based upon the percentage of indebtedness which the value of the mortgaged property located in Florida bears to the total value of all mortgaged property, unless the value of the Florida property exceeds this amount. Then the tax will be based upon the value of the Florida property. However, in no event will the tax be due on more than the indebtedness secured by the Florida mortgage or any other amount to which the mortgagee limits its recovery to. The mortgage shall state the value of the property in Florida and the other state(s); and also the percentage of the Florida property in relation to the total property. ~~When a note is made in Florida and is secured by a~~

mortgage on Florida property and is also secured by an out-of-state mortgage, tax will be due on the Florida mortgage based upon the full amount of indebtedness, since the note is fully taxable.

COMPUTATION OF TAX:

Example 1:

Value of Florida property/Total value of all property × Loan = Amount \*

Value of Florida property	\$ 400,000(1)
Value of out-of-state property	100,000
Total value of all property	\$ 500,000(2)
Amount of loan	\$ 550,000(3)

(1) \$400,000/(2) \$500,000 × (3) \$550,000 = \$440,000\*

\*Tax is calculated upon the ~~pro-rata~~ ~~prorata~~ amount of the loan in the amount of \$440,000, rather than the value of the Florida property, since the value of the Florida property is less than the ~~pro-rata~~ ~~prorata~~ amount of the indebtedness.

Example 2:

Value of Florida property/Total value of all property × Loan = Amount

Value of Florida property	\$ 600,000(1)
Value of out-of-state property	900,000
Total value of all property	\$ 1,500,000(2)
Amount of Loan	\$ 1,200,000(3)

(1) \$600,000\*/(2) \$1,500,000 × (3) \$1,200,000 = \$480,000

\*Tax is calculated on value of Florida property in the amount of \$600,000, rather than the ~~pro-rata~~ ~~prorata~~ amount of the loan, since the value of the Florida property is more than the ~~pro-rata~~ ~~prorata~~ amount of the indebtedness.

Example 3:

Value of Florida property/Total value of all property × Loan = Amount

Value of Florida property	\$ 800,000(1)
Value of out-of-state property	\$ 200,000
Total value of all property	\$ 1,000,000(2)
Amount of Loan	\$ 600,000(3)

(1) \$800,000/(2) \$1,000,000 × (3) \$600,000\* = \$480,000

\*Tax is calculated on \$600,000, since the amount of indebtedness is less than the value of the Florida property but more than the ~~pro-rata~~ ~~prorata~~ amount of the loan.

(32) In-State Notes-Secured by Florida Mortgage: A mortgage recorded in this state encumbering Florida real or personal property, which is security for an in-state note, is subject to tax as follows:

(a) Secured by Multi-State Mortgage: When a note is made in Florida and is secured by a multi-state mortgage recorded in Florida, tax is due on the full amount of the note (with a maximum tax due of \$2450) or the percentage of the indebtedness which the value of the mortgaged property located in Florida bears to the total value of all the mortgaged property, whichever is greater. However, where the mortgage

limits recovery to less than the amount of the indebtedness secured, the tax is due on the full amount of the note (with a maximum tax due of \$2450) or the amount to which the mortgage limits recovery, whichever is greater.

(b) Secured by Florida Mortgage only: When a note is made in Florida and is secured by a mortgage on Florida property and is also secured by an out-of-state mortgage, tax is due on the full amount of the note (with a maximum tax due of \$2450), the percentage of the indebtedness which the value of the mortgaged property located in Florida bears to the total value of all the mortgaged property, or the value of the property located in Florida, whichever is greater. However, where the mortgage limits recovery to less than the amount of the indebtedness secured, the tax is due on the full amount of the note (with a maximum tax due of \$2450) or the amount to which the mortgage limits recovery, whichever is greater.

(33)(32) Recorded Evidences of Obligations: Tax is required on a mortgage, trust deed, security agreement, or other evidence of indebtedness filed or recorded in this state. The tax shall be due on the full amount of the primary obligation secured by said mortgage, trust deed, security agreement, or other evidence of indebtedness. The tax is due only on the full amount of one time on the primary obligation, whether the primary obligation is secured by one or more mortgages from the same obligor, or by an additional or supplemental mortgage from another party. All such mortgages are deemed to secure the primary obligation. For example, a mortgage given as additional collateral, to secure a cross-collateralization agreement or guaranty agreement, or given as substitution of collateral, will not require additional tax if proper tax is paid on the full amount of the primary obligation. However, where proper tax is not paid on the full amount of the primary obligation, the tax shall be paid on any additional or supplemental mortgage. A document recorded which renews or extends an existing obligation is subject to tax, unless it meets the requirements of s. 201.09, F.S. Some examples Examples of documents on which tax may be required, within the limitations stated in this rule, when recorded in this state are include, but are not limited to:

- (a) Mortgage
- (b) Trust Deed
- (c) Indenture
- (d) Supplemental Mortgage or Indenture
- (e) Amendment to Mortgage or Indenture
- (f) Mortgage Modification or Extension Agreement
- (g) Assumption Agreement
- (h) Mortgage Securing Guaranty
- (i) Mortgage Securing Indemnification Agreement
- (j) Mortgage Securing Bail Bond
- (k) Mortgage Securing Letter of Credit
- (l) Mortgage Securing Line of Credit
- (34)(33) No change.

Specific Authority 201.11, 213.06(1) FS. Law Implemented 201.01, 201.08 FS. History—Revised 8-18-73, Formerly 12A-4.53, Amended 2-21-77, 11-29-79, 4-11-80, 7-27-80, 12-23-80, 3-30-81, 12-30-82, 8-29-84, Formerly 12B-4.53, Amended 12-29-86, 12-5-89, 2-13-91, 10-18-94, 12-30-97, 7-28-98, 1-4-01,\_\_\_\_\_.

12B-4.054 Exempt Transactions.

(1) through (8) No change.

(9) Agreement for Deed: No Personal Liability: Contracts for sale of land, which contain no “written obligation to pay money” of the same nature of promissory notes and non-negotiable notes, are not to be deemed written obligations to pay money within the purview of s. 201.08(1)(a), F.S. (State v. Green, 132 So. 2d 761 (Fla. 1961)) Attorney General Opinion 059-244 is construed as extending to contracts for the sale of land which contain express obligations to pay money, of the same genus as promissory notes and non-negotiable notes. With this limitation, Opinion 059-244 is adhered to and confirmed. (1961 Op. Att’y. Gen. Fla. 061-176 (Oct. 27, 1961)) If the following provision is incorporated in agreement for deed: “. . . as against the buyer or any subsequent purchaser from the buyer or any beneficiary for whom they may be acting, it being the understanding of the parties that the seller will look only to the land itself for payment of the balance of the purchase price,” there is no obligation to pay money in the contract and no documentary stamps are due. However, if such agreement for deed is filed or recorded in Florida, it would be subject to the documentary stamp tax under s. 201.08(1)(b), F.S.

(10) through (19) No change.

(20) Banker’s or Trade Acceptances: Banker’s or trade acceptances, when payable on a date subsequent to acceptance, are written obligations for the payment of money from the date of such acceptance and are taxable. The maximum tax due on a banker’s or trade acceptance is \$2450. However, when payable on demand or presentation, and presentation is made after acceptance, they are not written obligations to pay money and are not taxable. (1961 Op. Att’y. Gen. Fla. 066-18 (Mar. 11, 1966)) Cross Reference – Subsection (16) of Rule 12B-4.053(16), F.A.C.

(21) through (30) No change.

Specific Authority 201.11, 213.06(1) FS. Law Implemented 201.01, 201.08, 201.09, 201.10, 201.11, 201.21, 201.22, 201.23, 201.24, 517.32 FS. History—Revised 8-18-73, Formerly 12A-4.54, Amended 2-21-77, 11-29-79, 3-5-80, 4-11-80, 7-27-80, 12-23-80, 2-12-81, 3-30-81, 12-3-81, Formerly 12B-4.54, Amended 12-29-86, 12-5-89, 2-13-91, 10-18-94, 12-30-97, 7-28-98, 1-4-01,\_\_\_\_\_.

**DEPARTMENT OF REVENUE**

**Miscellaneous Tax**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Tax on Production of Oil and Gas	12B-7
RULE TITLES:	RULE NOS.:
Public Use Forms	12B-7.008
Public Use Forms	12B-7.026

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12B-7.008, F.A.C., of Part I (Tax on Production of Oil and Gas) and Rule 12B-7.026, F.A.C., of Part II (Severance Tax on Solid Minerals), of Chapter 12B-7, F.A.C., is to adopt, by reference, new forms and revisions to forms used by the Department in the administration of the tax on the production of oil and gas and the severance tax.

SUBJECT AREA TO BE ADDRESSED: The subject of this workshop is the adoption, by reference, of new forms and revisions to forms used by the Department in the administration of the tax on the production of oil and gas and the severance tax.

SPECIFIC AUTHORITY: 211.125(1), 211.33(6), 213.06(1), 373.41492(4)(b) FS.

LAW IMPLEMENTED: 211.125, 211.30, 211.31, 211.3103, 211.3106, 211.33, 373.41492 FS.

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

TIME AND DATE: 1:30 p.m., December 11, 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. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, which can be reached at (800)955-8770 (Voice) and (800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT WORKSHOP IS: Baldan Sulker, Senior Tax Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4696, e-mail: sulkerb@dor.state.fl.us.

The Department’s proposed rules are available on the Department’s web site: [www.myflorida.com/dor/rules](http://www.myflorida.com/dor/rules).

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

**PART I – TAX ON PRODUCTION OF OIL AND GAS**

**12B-7.008 Public Use Forms.**

(1)(a) The following public-use forms and instructions are used by the Department in its dealings with the public. These forms are hereby incorporated and made a part of this rule by reference.

(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 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_144	Gas and Sulfur Production Quarterly Tax Return (R. 01/00 <del>1-2-94</del> )	___ 12/94
(2) DR-144ES	<u>Declaration of Estimated Gas and Sulfur Production Tax (R. 02/00)</u>	___
(3)(2) DR_145	Oil Production Monthly Tax Return (R. 02/00 <del>1-5-93</del> )	___ 12/94
(4)(3) DR_145X	<del>Amended Florida</del> Oil Production Monthly <u>Amended</u> Tax Return (R. 02/00 <del>1-2-94</del> )	___ 12/94

Specific Authority 211.125(1), 213.06(1) FS. Law Implemented 211.125 FS. History–New 12-28-78, Formerly 12B-7.08, Amended 12-18-94, \_\_\_\_\_.

**PART II – SEVERANCE TAX ON SOLID MINERALS**

12B-7.026 Public Use Forms.

(1)(a) The following public-use forms and instructions are used by the Department in its dealings with the public. These forms are hereby incorporated and made a part of this rule by reference.

(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 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-142	Producers Severance Tax Return (R. 12/99 <del>1-12-98</del> ) (R. 01/00 <del>1-2-94</del> )	___ 10/01 ___ 12/94

(2) DR-142ES Declaration/Installment Payment of Estimated Solid Mineral Severance Tax (R. 02/00) \_\_\_\_\_

(3)(2) No change.

Specific Authority 211.33(6), 213.06(1), 373.41492(4)(b) FS. Law Implemented 211.30, 211.31, 211.3103, 211.3106, 211.33, 373.41492 FS. History–New 12-18-94, Amended 10-4-01, \_\_\_\_\_.

**DEPARTMENT OF REVENUE**

**Miscellaneous Tax**

RULE CHAPTER TITLE: Insurance Premium Taxes, Fees, and Surcharges  
RULE CHAPTER NO.: 12B-8

RULE TITLE: Tax Statement; Overpayments  
RULE NO.: 12B-8.003

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12B-8.003, F.A.C. (Tax Statement; Overpayments), is to adopt changes to forms used by the Department in the administration of the insurance premium tax.

SUBJECT AREA TO BE ADDRESSED: The subject of this workshop is the proposed adoption of changes to forms used by the Department in the administration of the insurance premium tax.

SPECIFIC AUTHORITY: 213.06(1) FS.

LAW IMPLEMENTED: 213.05, 213.37, 624.5092, 624.511, 624.518 FS.

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

TIME AND DATE: 1:30 p.m., December 11, 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. Persons with hearing or speech impairments may 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: Robert DuCasse, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4715 or e-mail: ducasser@dor.state.fl.us

THE DEPARTMENT’S PROPOSED RULES ARE AVAILABLE ON THE DEPARTMENT’S WEB SITE: [www.myflorida.com/dor/rules](http://www.myflorida.com/dor/rules).

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12B-8.003 Tax Statement; Overpayments.

(1) Tax returns and reports shall be made by insurers on forms prescribed by the Department. These forms are hereby incorporated by reference in this rule.

(2) through (4) No change.

Form Number	Title	Effective Date
(5)(a) DR-907	Florida Department of Revenue Insurance Premium Installment Payment (R. <del>01/03 01/02</del> )	____ <del>08/02</del>
(b) DR-907N	Information for Filing Insurance Premium Installment Payment (Form DR-907) (R. <del>01/03 01/02</del> )	____ <del>08/02</del>
(6)(a) DR-908	Insurance Premium Taxes and Fees Return Calendar Year- <del>2002 2001</del> – Due March 1, <del>2003 2002</del> (R. <del>01/03 01/02</del> )	____ <del>08/02</del>
(b) DR-908N	Instructions for Preparing Form DR-908 Florida Insurance Premium Taxes and Fees Return (R. <del>01/03 01/02</del> )	____ <del>08/02</del>
(7) DR-350900	2001 Insurance Premium Tax Information for Schedules XII and XIII, DR-908 (R. <del>01/03 01/02</del> )	____ <del>08/02</del>

Specific Authority 213.06(1) FS. Law Implemented 213.05, 213.37, 624.5092, 624.511, 624.518 FS. History—New 2-3-80, Formerly 12B-8.03, Amended 3-25-90, 3-10-91, 2-18-93, 6-16-94, 12-9-97, 3-23-98, 7-1-99, 10-15-01, 8-1-02,\_\_\_\_\_.

**DEPARTMENT OF REVENUE**

**Corporate, Estate and Intangible Tax**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Corporate Income Tax	12C-1
RULE TITLES:	RULE NOS.:
Returns; Filing Requirement	12C-1.022
Forms	12C-1.051

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12C-1.022, F.A.C. (Returns; Filing Requirement), is to implement s. 43, Chapter 2002-218, L.O.F., which eliminates the requirement to file information returns for Subchapter S corporations, tax-exempt entities, or certain other entities that do not usually owe federal income tax. The provisions that require these entities to report taxable income are not affected by these proposed amendments.

The proposed amendments to Rule 12C-1.022, F.A.C., will: (1) provide that a Subchapter S corporation must file Form F-1120 (Florida Corporate Income/Franchise and Emergency Excise Tax Return) for taxable income when it is subject to federal income tax; (2) provide that homeowners that elect to be taxed under s. 528, I.R.C., are not required to file form F-1120; (3) provide that organizations that hold a “determination letter” from the Internal Revenue Service as a nonprofit organization are required to file Form F-1120 when the organization has unrelated trade or business income or is filing Form 990-C or Form 990-T with the Internal Revenue Service; (4) remove the requirement for credit unions exempt under s. 501(c)(14), I.R.C., to file Form F-1120 for the first year of operation; (5) provide that qualified pension, health, or dental plans that remain exempt from federal income tax are not required to file Form F-1120; and (6) provide that entities treated as a U.S. real estate mortgage investment for federal purposes must file Form F-1120 for taxable years when they are subject to federal income tax.

The purpose of the proposed amendments to Rule 12C-1.051, F.A.C. (Forms), is to adopt, by reference, changes to forms used by the Department in the administration of the Florida corporate income tax.

SUBJECT AREA TO BE ADDRESSED: The subject of this workshop is: (1) the proposed elimination of the requirement to file information returns for subchapter S corporations, tax-exempt entities, and certain other entities that do not usually owe federal income tax; and (2) the proposed adoption of changes to forms used by the Department in the administration of the Florida corporate income tax.

SPECIFIC AUTHORITY: 213.06(1), 220.21, 220.51 FS.

LAW IMPLEMENTED: 120.55(1)(a)4., 220.11, 220.12, 220.13(1),(2), 220.14, 220.15, 220.16, 220.181, 220.182, 220.183, 220.184, 220.1845, 220.185, 220.186, 220.1895, 220.19, 220.191, 220.21, 220.211, 220.22, 220.221, 220.222, 220.23, 220.24, 220.241, 220.31, 220.32, 220.33, 220.34, 220.41, 220.42, 220.43, 220.44, 220.51, 220.721, 220.723, 220.725, 220.737, 220.801, 220.803, 220.805, 220.807, 220.809, 221.04 FS.

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

TIME AND DATE: 1:30 p.m., December 11, 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. Persons with hearing or speech impairments may 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: Gary Moreland, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4831, e-mail (morelandg@dor.state.fl.us).

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

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12C-1.022 Returns; Filing Requirement.

(1) In general, every corporation as defined in s. 220.03(1)(e), F.S., subject to tax under Part II of Chapter 220, F.S., and every bank and savings association subject to tax under Part VII of Chapter 220, F.S., shall make a return of income for each taxable year in which such entity ~~is~~ is liable for tax under the Florida Income Tax Code, or is required to make a federal income tax return, regardless of whether such taxpayer is liable for tax under the Florida Income Tax Code.

(a) No change.

(b) S "S" corporations are not subject to the tax, except for taxable years when they are liable for the federal tax under the Internal Revenue Code. An "S" corporation must file a Florida Corporate Income/Franchise and Emergency Excise Tax Return (Form F-1120, incorporated by reference in Rule 12C-1.051, F.A.C.) on the regular Form F-1120, answering questions that are appropriate, for the first year under the Florida Income Tax Code that it elects or has elected to be taxed under Subchapter S of the Internal Revenue Code. Returns for subsequent years are not required so long as the Subchapter S election continues; however, returns are required for taxable years when it is they are liable for federal tax under the Internal Revenue Code.

2. A single member limited liability company or qualified subchapter S corporation that is disregarded for Florida and federal tax purposes is not required to file a separate Florida corporate income tax return. However, the income of the company is not exempt from tax. If it is owned by a corporation, whether directly or indirectly, the corporation is required to file Form F-1120 reporting its own income together with the income of the single member limited liability company.

(c)1. Homeowners associations, including corporations or associations organized to operate condominiums pursuant to the Condominium Act, that are required to file federal returns on Form 1120, or that elect to file federal returns on Form 1120, must file a Florida Form F-1120 annually, regardless of whether any tax may be due.

2. Homeowners associations that elect to be taxed under s. 528, I.R.C., and file federal Form 1120-H, are not required to must file Form F-1120 with the Department the Florida Corporate Income/Franchise and Emergency Excise Tax Return, answering questions that are appropriate, for the first year under the Florida Income Tax Code that Form 1120-H is filed. Returns for subsequent years are not required so long as the homeowners association does not file federal Form 1120. However, returns are required for taxable years when federal Form 1120 is filed, and for the first year federal Form 1120-H is filed subsequent to the filing of Form 1120.

(d) No change.

(e)4. Any nonprofit non-profit or other organization, including a private foundation, which is fully exempt from the federal income tax and which has a "determination letter" from the Internal Revenue Service to that effect, is required to file Form F-1120 annually when such organization has "unrelated trade or business income," as defined in s. 512, I.R.C., or is filing with the Internal Revenue Service on Form 990-C or Form 990-T (as opposed to other 990 forms) a copy of the determination letter attached to Form F-1120 in order to establish with the Department that it qualifies as an exempt organization under the Florida Income Tax Code. Additional Florida returns will not be required as long as the organization continues to qualify for exemption from federal income tax.

2. However, such organizations having "unrelated trade or business income" as defined in I.R.C. Section 512 or filing with the Internal Revenue Service on Forms 990-C or 990-T (as opposed to other 990 forms) must file Form F-1120 annually.

3. For federal tax purposes if an organization is claiming exempt status, but has not yet received a determination letter verifying its exempt status, Treas. Reg. 1.6033-2(c) requires it to file the information return for exempt organizations. The information return must indicate that the return is being filed in belief that the organization is exempt under s. 501(a), I.R.C., but that the Internal Revenue Service has not yet recognized such status. For Florida purposes, the organization must file an F-1120 with the attached federal information return. If the organization is considered to be fully exempt and does not have unrelated trade or business income, only the information questions on the Florida corporate income/franchise tax return need be completed. If the determination letter is received verifying the exempt status, the organization will be required to file an F-1120, with the attached determination letter, for its next taxable year. If the exempt organization has no unrelated trade or business income, it will not have any further filing requirements. If the Internal Revenue Service determines that an organization is not fully exempt after it has filed a form 990 in anticipation of being granted 501(a) status under the Internal Revenue Code, the organization will be required to file an amended return for Florida purposes, pursuant to s. 220.23, F.S.

(f) No change.

(g) Credit unions without capital stock organized and operated for mutual purposes and without profit that are exempt under s. 501(c)(14), I.R.C., are not subject to the Florida tax, except for taxable years when they are liable for federal tax under the Internal Revenue Code. ~~A credit union must file a Florida corporate income/franchise tax return, answering questions that are appropriate, for the first year under the Florida Income Tax Code. Returns for subsequent years are not required so long as the credit union remains completely exempt from tax under the Internal Revenue Code. Returns are required for taxable years they are liable for federal tax under the Internal Revenue Code.~~

(h) Benefit plans qualifying under s. 401(a), I.R.C., and health and dental plans qualifying under s. 125, I.R.C., are only required for federal tax purposes to file information returns. A qualified pension, health, or dental plan ~~that which~~ is totally exempt from federal income tax ~~will not be required to~~ must only file Form F-1120 with the Department, the initial Florida income/franchise tax return claiming its exemption under the appropriate section of the Internal Revenue Code. Subsequent returns will not be required as long as the plan remains totally exempt for federal purposes.

(i) No change.

(j) Entities that have elected to be treated as a U.S. real estate mortgage investment conduit (REMIC) for federal purposes are not subject to the tax, except for taxable years when they are liable for the federal tax on income from foreclosure property pursuant to s. 860G(c), I.R.C. ~~A REMIC must file a Florida Corporate Income/Franchise and Emergency Excise Tax Return on the regular Form F-1120, answering questions that are appropriate, for the first year under the Florida Income Tax Code that it elects or has elected under s. 860D, I.R.C., to be taxed as a REMIC. Such entities Returns for subsequent years are not required so long as the election continues; however, returns are required to file Form F-1120 for taxable years when they are liable for federal tax on income from foreclosure property pursuant to s. 860G(c), I.R.C.~~

(k) No change.

(2) through (6) No change.

Specific Authority 213.06(1), 220.21, 220.51 FS. Law Implemented 220.22 FS. History—New 10-20-72, Amended 10-20-73, Revised 10-8-74, Amended 3-5-80, Formerly 12C-1.22, Amended 12-21-88, 4-8-92, 12-7-92, 3-18-96, 10-2-01, \_\_\_\_\_.

12C-1.051 Forms.

(1)(a) The following forms and instructions are used by the Department in its administration of the corporate income tax and franchise tax. These forms are hereby incorporated by reference in this rule.

(b) No change.

Form Number	Title	Effective Date
(2) through (3)	No change.	
(4)(a) F-1065	Florida Partnership Information Return (R. <del>01/03</del> 01/01)	____ 08/02
(b) F-1065N	Instructions for Preparing Form F-1065 Florida Partnership Information Return (R. <del>01/03</del> 01/01)	____ 08/02
(5) F-1120A	Florida Corporate Short Form Income Tax Return (R. <del>01/03</del> 01/02)	____ 08/02
(6)(a) F-1120	Florida Corporate Income/Franchise and Emergency Excise Tax Return (R. <del>01/03</del> 01/02)	____ 08/02
(b) F-1120N	F-1120 Instructions-Corporate Income/ Franchise and Emergency Excise Tax Return for taxable years beginning on or after January 1, <u>2002</u> <del>2004</del> (R. <del>01/03</del> 01/02)	____ 08/02
(7) F-1120ES	Declaration/Installment of Florida Estimated Income/Franchise and/or Emergency Excise Tax for Taxable Year beginning on or after January 1, <u>2003</u> <del>2002</del> (R. <del>01/03</del> 01/02)	____ 08/02
<del>(8) F-1120P</del>	<del>Payment Coupon (R. 01/02)</del>	____ 08/02
<del>(8)(9)(a) F-1120X</del>	<del>Amended Florida Corporate Income/ Franchise and Emergency Excise Tax Return (R. <del>01/03</del> 01/02)</del>	____ 08/02
(b) F-1120XN	General Instructions for Filing F-1120X (R. <del>01/03</del> 01/02)	____ 08/02
<del>(9)(10)</del>	No change.	

- (10)(11)(a) F-1156Z Florida Enterprise Zone Jobs Credit Certificate of Eligibility for Corporate Income Tax-Effective January 1, ~~2003~~ 2002  
(R. ~~01/03~~ N. 01/02) \_\_\_\_\_ 08/02
- (b) F-1156ZN Instructions for Completing Form F-1156Z Florida Enterprise Zone Jobs Credit Certificate of Eligibility for Corporate Income Tax-Effective January 1, ~~2003~~ 2002  
(R. ~~01/03~~ N. 01/02) \_\_\_\_\_ 08/02
- (12) through (13) renumbered (11) through (12) No change.
- (13)(14)(a) F-1158Z Enterprise Zone Property Tax Credit – Effective July 1, 1995  
(R. ~~01/03~~ 01/00) \_\_\_\_\_ 08/02
- (b) F-1158ZN Instructions for Form F-1158Z (Effective July 1, 1995) Enterprise Zone Property Tax Credit  
(R. ~~01/03~~ 01/00) \_\_\_\_\_ 08/02
- (14)(15)(a) F-1159 Application for Child Care Tax Credits  
(R. ~~01/03~~ 10/01) \_\_\_\_\_ 08/02
- (b) F-1159N Instructions for Filing F-1159  
(R. ~~01/03~~ 10/01) \_\_\_\_\_ 08/02
- (15)(16) F-1160 Application for Corporate Income Tax Credit for Contributions to Nonprofit Scholarship Funding Organizations  
(R. ~~01/03~~ N. 01/02) \_\_\_\_\_ 08/02
- (16)(17) No change.
- (17)(18) F-7004 Florida Tentative Income/Franchise and/or Emergency Excise Tax Return and Application for Extension of Time to File Return  
(R. ~~01/03~~ 01/02) \_\_\_\_\_ 08/02

Specific Authority 213.06(1), 220.51 FS. Law Implemented 120.55(1)(a)4., 220.11, 220.12, 220.13(1),(2), 220.14, 220.15, 220.16, 220.181, 220.182, 220.183, 220.184, 220.1845, 220.185, 220.186, 220.1895, 220.19, 220.191, 220.21, 220.211, 220.22, 220.221, 220.222, 220.23, 220.24, 220.241, 220.31, 220.32, 220.33, 220.34, 220.41, 220.42, 220.43, 220.44, 220.51, 220.721, 220.723, 220.725, 220.737, 220.801, 220.803, 220.805, 220.807, 220.809, 221.04 FS. History–New 9-26-77, Amended 12-18-83, Formerly 12C-1.51, Amended 12-21-88, 12-31-89, 1-31-91, 4-8-92, 12-7-92, 1-3-96, 3-18-96, 3-13-00, 6-19-01, 8-1-02.

**DEPARTMENT OF REVENUE**

**Corporate, Estate and Intangible Tax**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Intangible Personal Property Tax	12C-2
RULE TITLES:	RULE NOS.:
Due Date – Payment of Tax –	
Discounts Allowed	12C-2.005
Taxable Situs – Reporting Requirements –	
Who Shall File a Return	12C-2.006
Penalties and Interest	12C-2.007
Information Reports	12C-2.008
Public Use Forms	12C-2.0115
Refunds	12C-2.012

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12C-2.005, F.A.C. (Due Date – Payment of Tax – Discounts Allowed), and Rule 12C-2.006, F.A.C. (Taxable Situs – Reporting Requirements – Who Shall File a Return), is to: (1) provide that forms used by the Department in the administration of the intangible personal property tax are incorporated by reference in Rule 12C-2.0115, F.A.C.; and (2) remove provisions on how to obtain forms from the Department that are redundant of Rule 12C-2.0115, F.A.C.

The purpose of the proposed amendments to Rule 12C-2.007, F.A.C. (Penalties and Interest), is to implement the provisions of s. 60, Chapter 2002-218, L.O.F., by removing provisions for penalties imposed for the late filing of a Corporate Information Report, a report that is no longer required to be filed.

The purpose of the proposed amendments to Rule 12C-2.008, F.A.C. (Information Reports), is to: (1) implement the provisions of s. 60, Chapter 2002-218, L.O.F., which repeals the requirement for a corporation to provide written notice to its Florida stockholders reflecting the just value of each class of its stock subject to the annual intangible tax; (2) provide that forms used by the Department in the administration of the intangible personal property tax are incorporated by reference in Rule 12C-2.0115, F.A.C.; (3) provide that form DR-301 is incorporated by reference in Rule 12C-3.008, F.A.C.; and (4) remove provisions on how to obtain forms from the Department that are redundant of Rule 12C-2.0115, F.A.C.

The purpose of the proposed amendments to Rule 12C-2.0115, F.A.C. (Public Use Forms), is to: (1) remove obsolete forms and forms that do not meet the definition of a “rule,” as defined in s. 120.52(15), F.S.; and (2) adopt new forms, and changes to forms, used by the Department in the administration of the intangible personal property tax.

The purpose of proposed amendments to Rule 12C-2.012, F.A.C. (Refunds) is to: (1) remove obsolete provisions and examples of claims for refunds of the intangible personal property tax; (2) provide that a request for refund must be submitted to the Department on form DR-26, Application for Refund; (3) provide guidelines on the statute of limitations for a refund of intangible personal property tax; and (4) remove provisions on how to obtain forms from the Department that are redundant of Rule 12C-2.0115, F.A.C.

**SUBJECT AREA TO BE ADDRESSED:** The subject of this workshop is: (1) implementation of s. 60, Chapter 2002-218, L.O.F., which repeals the requirement for a corporation to provide written notice to its Florida stockholders reflecting the just value of each class of its stock subject to the annual intangible tax; (2) the adoption of forms used by the Department in the administration of the intangible personal property tax; (3) the guidelines for obtaining a refund of the intangible personal property tax from the Department; and (4) the removal of obsolete or unnecessary provisions.

**SPECIFIC AUTHORITY:** 199.202, 213.06(1), 213.21 FS.

**LAW IMPLEMENTED:** 199.023, 199.032, 199.042, 199.052, 199.057, 199.062, 199.103, 199.1055, 199.135, 199.175, 199.185, 199.202, 199.232, 199.252, 199.282, 199.292, 213.235, 215.26, 607.1622, 733.702 FS.

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

**TIME AND DATE:** 1:30 p.m., December 11, 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 at (850)488-0712. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, which can be reached at (800)955-8770 (Voice) and (800)955-8771 (TDD).

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

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT WORKSHOP IS:** Baldan Sulker, Senior Tax Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4696, e-mail: [sulkerb@dor.state.fl.us](mailto:sulkerb@dor.state.fl.us)

**THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:**

12C-2.005 Due Date – Payment of Tax – Discounts Allowed.

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

2. All requests for extensions of time, for filing returns or reports and paying the tax, must be made in writing and received by the department prior to the due date. Request for extension of time to file an intangible tax return is to be made on form DR-602 (Intangible Tax Application for Extension of Time to File Return, incorporated by reference in Rule 12C-2.0115, F.A.C.). The Department ~~department~~ will inform taxpayers of respond only to requests that which are denied.

3. No change.

~~(b) Application for Extension of Time to File Florida Intangible Tax Return (DR-602) is incorporated in Rule 12C-2.0115. The form entitled Application for Extension of Time to File Florida Intangible Tax Return (DR-602) is 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 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://myflorida.com/dor/>). Persons with hearing or speech impairments may call the Department's TDD at 1(800)367-8331.~~

~~(b)(e)~~ No change.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.042, 199.052, 199.135, 199.202, 607.1622 FS. History—New 4-17-72, Revised 12-20-73, Amended 11-17-74, Formerly 12C-2.05, Amended 11-21-91, 10-9-01.

12C-2.006 Taxable Situs – Reporting Requirements – Who Shall File a Return.

(1)(a) No change.

(b)1. Individuals, married couples filing jointly, and guardians filing on behalf of their ward shall file on form DR-601I, Intangible Personal Property Tax Return (incorporated by reference in Rule 12C-2.0115, F.A.C.). ~~Intangible Tax Return (DR-601) is incorporated in Rule~~

12C-2.0115, F.A.C., F.A.C. The form entitled Intangible Tax Return (DR-6011) is 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 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://myflorida.com/dor/>). Persons with hearing or speech impairments may call the Department's TDD at 1(800)367-8331.

2. Corporations, partnerships, affiliated groups, and fiduciaries shall file on form DR-6011C, Intangible Personal Property Tax Return for Corporation, Partnership, and Fiduciary Filers (incorporated by reference in Rule 12C-2.0115, F.A.C.). Intangible Tax Return (DR-601C) is incorporated in Rule 12C-2.0115, F.A.C. The form entitled Intangible Tax Return (DR-601C) is 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 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://myflorida.com/dor/>). Persons with hearing or speech impairments may call the Department's TDD at 1(800)367-8331.

3. No change.

4. Governmental Leasehold Estates are to be reported on form DR-601G, Governmental Leasehold Intangible Personal Property Tax Return for Individual and Joint Filers (incorporated by reference in Rule 12C-2.0115, F.A.C.). Governmental Leasehold Intangible Tax Return (DR-601G) is incorporated in Rule 12C-2.0115, F.A.C. The form entitled Government Leasehold Intangible Tax Return (DR-601G) is 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 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://myflorida.com/dor/>). Persons with hearing or speech impairments may call the Department's TDD at 1(800)367-8331.

(2) through (5) No change.

(6) Corporations: Every corporation electing to pay the tax as agent for its Florida stockholders must file a return by June 30 of the tax year, even if no tax is due with the return. If no return is filed or the return is filed after June 30, the election to pay the tax for stockholders will not be valid. Form DR-601C, Intangible Personal Property Tax Return (incorporated by reference in Rule 12C-2.0115, F.A.C.) or DR-601AC or DR-601AC, is the form to be used when filing and paying the tax as agent for shareholders. ~~The form entitled Intangible Tax Return (DR-601C or DR-601AC) is incorporated in Rule 12C-2.0115, F.A.C. The form entitled Intangible Tax Return (DR-601AC or DR-601C) is available, 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 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://myflorida.com/dor/>). Persons with hearing or speech impairments may call the Department's TDD at 1(800)367-8331.~~

(7) No change.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.057, 199.062, 199.175, 199.202 FS. History—New 4-17-72, Revised 12-20-73, Amended 11-17-74, 9-27-76, 9-6-77, Formerly 12C-2.06, Amended 11-21-91, 1-5-94, 6-2-98, 10-9-01, \_\_\_\_\_.

12C-2.007 Penalties and Interest.

(1) through (5) No change.

(6) Penalty ~~for~~ ~~For~~ Late Filing of a Corporate Information Report or Security Position Statement.

(a) Late filing of an information report by a corporation will subject the corporation to a penalty of \$100. However, if the corporation has been granted an extension of time under Chapter 199, F.S., the penalty shall not be assessed if the report is filed within the extended period.

(b) 1. through 3. renumbered (a) through (c) No change.

(7) through (8) No change.

Specific Authority 199.202, 213.06(1), 213.21 FS. Law Implemented 199.052, 199.282, 213.235 FS. History—New 4-17-72, Revised 12-20-73, Amended 9-27-76, 4-2-78, Formerly 12C-2.07, Amended 11-21-91, 5-18-93, 4-2-00, 10-9-01, \_\_\_\_\_.

12C-2.008 Information Reports.

(1)(a) Each tax year, every corporation qualified or doing business in this state shall provide its Florida shareholders and the Department a written notification where applicable of the following:

(a)1. The corporation's election to pay the tax as agent for its Florida shareholders. The notice shall be filed on an Intangible Personal Property Tax Return for Corporation, Partnership, and Fiduciary Filers (form DR-601C, incorporated by reference in Rule 12C-2.0115, F.A.C.) by completing Schedule E and checking the notification box. A copy of the notice given to Florida shareholders is to be attached to the return.

(b)2. On or before April 1 of the tax year, corporations electing to pay the tax as agent for shareholders shall notify their Florida shareholders in writing of the election to pay the intangible tax as agent for shareholders. A representative copy of the written notice is to be attached to form DR-601C and filed with the Department.

3. On or before April 1 of the tax year each corporation doing business in this state must provide its Florida shareholders with a written notice of the value of its shares of stock which are not regularly traded on an exchange, over the counter, subject to restrictions, or which have a value less than the published or traded value. A copy of the value notice given to Florida shareholders must be attached to the corporation's intangible tax return. No notice of value is required when the corporation pays the tax as agent for its Florida shareholders.

(b) The form entitled Intangible Tax Return (DR-601C) is incorporated in Rule 12C-2.0115, F.A.C. The form entitled Intangible Tax Return (DR-601C) is 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 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://myflorida.com/dor/>). Persons with hearing or speech impairments may call the Department's TDD at 1(800)367-8331.

(c) A representative copy of the notices required to be given to shareholders by subparagraphs 2. and 3. of paragraph (a) above shall be attached to the corporation's intangible tax return. The notices required to be given to the department by paragraph (a) above shall be given by marking the appropriate box or boxes on the Intangible Tax Return (DR-601C).

(2) through (4) No change.

(5)(a)1. Personal representatives of estates shall file with the Department a copy of the Preliminary Notice and Report (form DR-301), which is incorporated by reference in Rule 12C-3.008 ~~12C-2.0115~~, F.A.C.).

2. ~~The form entitled Preliminary Notice and Report (DR-301) is 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 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://myflorida.com/dor/>). Persons with hearing or speech impairments may call the Department's TDD at 1(800)367-8331.~~

(b) No change.

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.057, 199.062, 199.185, 607.1622, 733.702, 731.111, 733.604 FS. History—New 4-17-72, Revised 12-20-73, Amended 4-21-75, Formerly 12C-2.08, Amended 7-31-90, 11-21-92, 1-5-94, 10-9-01, \_\_\_\_\_.

12C-2.0115 Public Use Forms.

(1)(a) The following public use forms and instructions are employed by the Department in its dealings with the public related to administration of the intangible tax. These forms are hereby incorporated and made a part of this rule by reference.

(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 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-301	Preliminary Notice and Report Estate Tax (r. 05/93)	1/94

(2) DR-601-C	<u>2003 Florida Intangible Personal Property Tax Return for (Corporation, and Partnership, and Fiduciary Filers as of January 1, 2003)</u> (R. 01/03 <del>r. 01/02</del> )	____ 10/01	(13) <u>DR-350617 DR-618 TPS</u>	<u>Application for Exclusion from Filing Stockbroker Position Statement</u> (R. 01/02) <u>Intangible Tax Input Document (Third Party Source Billing Document)</u> (r. 07/82)	____  7/82
(3) DR-601CN	<u>Instructions for Filing Form DR_601C</u> (R. 01/03 <del>r. 01/02</del> )	____ 10/01	(14) <u>DR-350618 DR-629 C</u>	<u>Stockbroker Instructions and Specifications for Reporting Information on Magnetic Media for Year Ending 12/31/01</u> (R. 01/02)	____
(4) DR-601CS	<u>2003 Accompanying Schedules B, C, D, and E for use with Form DR_601C</u> (R. 01/03 <del>r. 01/02</del> )	____ 10/01		<u>Florida Intangible Personal Property Tax Letter of Inquiry</u> (r. 11/92)	1/94
(5) DR-601-G	<u>Government Leasehold Intangible Personal Property Tax Return for 2003 Tax Year</u> (R. 01/02 <del>r. 01/01</del> )	____ 10/01	(15) <u>DR-350619 DR-629 I</u>	<u>Stockbroker Filing Magnetic Media Transmittal</u> (R. 01/02)	____
(6) DR-601-I	<u>2003 Florida Intangible Personal Property Tax Return for (Individual and Joint Filers as of January 1, 2002 Fiduciary)</u> (R. 01/03 <del>r. 01/02</del> )	____ 10/01		<u>Florida Intangible Personal Property Tax Letter of Inquiry</u> (r. 03/93)	1/94
(7) DR_601IN	<u>Instructions for Filing Form DR_601I</u> (R. 01/03 <del>r. 01/02</del> )	____ 10/01	(16) <u>DR-350620 DR-629 S</u>	<u>Stockbroker Information Report</u> (R. 01/02)	____
(8) DR_601IS	<u>2003 Accompanying Schedules B, C, D, and E for use with Form DR_601I</u> (R. 01/03 <del>r. 01/02</del> )	____ 10/01		<u>Individual and Fiduciary Intangible Personal Property Tax Letter of Inquiry</u> (r. 9/91)	1/94
(9) DR-602	<u>Intangible Tax Application for Extension of Timeto File Florida Intangible Tax Return</u> (R. 03/02 <del>r. 02/93</del> )	____ 4/94			
(10) <u>DR-350111 DR-609</u>	<u>Intangible Tax Self-Audit Worksheet - (R. 01/03) Clerk's Monthly Intangible Tax Transmittal Form</u> (r. 10/87)	____ 10/87			
(11) <u>DR-350112 DR-610 B</u>	<u>Taxpayer Affidavit (R. 06/01) Intangible Personal Property Tax Receipt (bookstyle)</u> (r. 04/87)	____ 4/87			
(12) <u>DR-350113 DR-610 US</u>	<u>Intangible Tax Self-Analysis Worksheet for Trusts (R. 01/03) Intangible Personal Property Receipt (unit set snap out style)</u> (r. 05/86)	____ 5/86			

Specific Authority 199.202(2), 213.06(1) FS. Law Implemented 199.023, 199.032, 199.042, 199.052, 199.062, 199.103, 199.1055, 199.135, 199.232, 199.292 FS., s. 1, Ch. 2001-225, L.O.F. History-New 11-21-91, Amended 1-5-94, 10-9-01.

12C-2.012 Refunds.

(1) Any person entitled to a refund of intangible personal property taxes may seek a refund by filing an Application for Refund (form DR-26, incorporated by reference in Rule 12-26.008, F.A.C.) with the Department. Form DR-26 must be in accordance with the timing provisions of s. 215.26, F.S., and must meet the requirements of s. 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C. A claim for refund may be filed within 3 years of the due date (June 30) of a return or 3 years from the date the tax payment was made.

(2)(a) 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. The postmark date determines the date on which the refund claim was filed.

(b) 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.

~~(3) All requests for refund must be made on form DR-26. Form DR-26, Application for Refund from the State of Florida, is incorporated in Rule 12C-2.0115. Copies of the form are available by: 1) writing the Florida Department of Revenue, Forms Distribution Center, 168 Blountstown Highway, Tallahassee, Florida 32304; or 2) faxing the Forms Distribution center at (850)922-2208; or 3) using a fax machine telephone handset to call the Department's automated Fax on Demand System at (850)922-3676; or, 4) visiting any local Department of Revenue Service Center to personally obtain a copy; or, 5) calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or, 6) downloading selected forms from the department's Internet site at the address shown inside the parentheses (<http://sun6.dms.state.fl.us/dor/>). Persons with hearing or speech impairments may call the Department's TDD 15 1(800)367-8331.~~

~~(4)(a) Example 1: Taxpayer filed a return and paid the tax on March 31, of the current tax year. The taxpayer may file a claim for refund 3 years from March 31 or 3 years from June 30, the due date for the return.~~

~~(b) Example 2: Assume the same facts as above. The taxpayer files a claim for refund which is postmarked July 15, of the third year following payment of the tax. No refund will be granted as the claim is barred by the statute of limitation.~~

Specific Authority 199.202, 213.06(1) FS. Law Implemented 199.252, 215.26. History--New 4-17-72, Formerly 12C-2.12, Amended 11-21-91.

**DEPARTMENT OF REVENUE**

**Corporate, Estate and Intangible Tax**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Estate Tax	12C-3
RULE TITLES:	RULE NOS.:
Public Use Forms	12C-3.008
Releases	12C-3.012

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12C-3.008, F.A.C. (Public Use Forms), is to adopt, by reference, changes to forms used by the Department in the administration of the Florida estate tax.

The purpose of the proposed amendments to Rule 12C-3.012, F.A.C. (Releases), is to reduce the number of copies of a legal description of property required to be submitted to the Department with form DR-308.

SUBJECT AREA TO BE ADDRESSED: The subject of this workshop is: (1) the adoption of changes to forms used by the Department in the administration of the Florida estate tax; and (2) the reduction in the number of copies of a legal description of property required to be submitted to the Department with form DR-308.

SPECIFIC AUTHORITY: 198.08, 213.06(1) FS.

LAW IMPLEMENTED: 198.08, 198.22 FS.

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

TIME AND DATE: 1:30 p.m., December 11, 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. Persons with hearing or speech impairments may 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: Maryellen Clemens, Senior Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4712, e-mail: clemensm@dor.state.fl.us.

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

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12C-3.008 Public Use Forms.

(1)(a) The following public-use forms and instructions are employed by the Department in its dealings with the public and are hereby adopted by reference.

(b) Copies of these ~~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 shown inside 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
<del>(2)</del> (4) DR-301	Preliminary Notice and Report ( <del>R. 09/01</del> <del>r. 07/98</del> )	<del>01/22/01</del>
<del>(3)</del> (2) DR-308	Request and Certificate for Waiver and Release of Florida Estate Tax Lien ( <del>R. 08/02</del> <del>r. 01/00</del> )	<del>01/22/01</del>

- (4)(3) DR-310 Domicile Statement  
(R. 08/02 ~~r. 11/96~~) \_\_\_\_\_ 01/22/01
- (5)(4) DR-312 Affidavit of No Florida  
Estate Tax Due (for  
decedents dying on or  
after January 1, 2000)  
(R. 09/01 ~~n. 01/00~~) \_\_\_\_\_ 01/22/01
- (6)(5) F-706 Florida Estate Tax  
Return for Residents,  
Nonresidents and  
Nonresident Aliens  
(R. 10/01 ~~n. 01/00~~) \_\_\_\_\_ 01/22/01

Specific Authority 198.08, 213.06(1) FS. Law Implemented 198.08 FS. History—New 9-26-77, Formerly 12C-3.08, Amended 1-11-93, 8-25-94, 1-22-01, \_\_\_\_\_.

12C-3.012 Releases.

A decedent’s estate being probated in this state may request a release of certain property from the estate tax lien. A release will be issued under the following conditions:

(1) Estate of Resident Decedents

(a) Filing of a Request and Certificate for Waiver and Release of the Florida Estate Tax Lien (Form DR-308), together with:

- 1. ~~Two three~~ copies of a description sufficient to identify the property to be released, and
- 2. Either payment of the full tentative tax or additional tax due Florida, or provision for the tentative tax or additional tax.

(b) No change.

(2) through (3) No change.

Specific Authority 198.08, 213.06(1) FS. Law Implemented 198.22 FS. History—New 8-25-94, Amended 12-13-94, 1-22-01, \_\_\_\_\_.

DEPARTMENT OF CORRECTIONS

RULE TITLE: Interstate Corrections Compact  
 RULE NO.: 33-601.401  
 PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to reflect office reassignment of responsibilities for interstate corrections compact issues.  
 SUBJECT AREA TO BE ADDRESSED: Interstate corrections compact.  
 SPECIFIC AUTHORITY: 941.57, 944.09, 945.21 FS.  
 LAW IMPLEMENTED: 941.55, 941.56, 941.57 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: Perri King Dale, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-601.401 Interstate Corrections Compact.

(1) Definitions. As used in this Chapter:

(a) “~~T~~ransfer” means transfer under the Interstate Corrections Compact authorized by Sections 941.56 and 941.57, F.S.

(b) “Administrator” means the Interstate Corrections Compact Administrator in the Office of Institutions ~~the Assistant Secretary for Community Corrections.~~

(c) “~~S~~ending state” means the state from which an inmate is transferred.

(d) “~~R~~eceiving state” means the state to which an inmate is transferred.

(2) A current list of states that are parties to the Interstate Corrections Compact and copies of contracts with individual party states may be obtained by writing the Interstate Corrections Compact Administrator, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. A list of party states is also published in Florida Statutes Annotated (West Publishing Co.) at Section 941.55.

(3) ~~All transfers must be approved by~~ The Interstate Corrections Compact Administrator shall approve, deny or initiate the interstate transfer of an inmate.

(4) When Florida is the Sending State.

(a) A request for transfer may be initiated by the inmate to the institutional classification team (ICT) or by the Warden of the institution at which the inmate is incarcerated.

(b) Any inmate whose transfer has been requested, but who does not consent to the transfer, shall be given a hearing before the ICT Classification Team or other appointed committee. The inmate shall be given at least 48 hours written notice of such hearing.

(c) Any request for transfer shall be evaluated by the ICT Classification Team, which shall make its recommendations to the Interstate Corrections Compact Warden. ~~If the Warden approves the requested transfer he shall forward the request to the Administrator for final action by the Assistant Secretary for Community Corrections.~~

(d) Inmates may be transferred:

- 1. ~~To be near home and job opportunities,~~
- 2. ~~For the safety of the inmate,~~
- 3. ~~To serve two sentences concurrently, or~~
- 4. For any ~~other~~ reason within the scope of Section 941.56, F.S.

(e) through (g) No change.

(5) When Florida is the Receiving State.

(a) A progress report shall be provided given to the sending state at six month intervals. The sending state shall be kept informed at all times of the inmate’s institutional address and shall be notified immediately if the inmate escapes.

(b) No change.

~~(c) Institutional or other officials of Florida shall not release publicity concerning inmates from a sending state except information of public record, such as sentence date. Information concerning the escape of an inmate may be given directly to news media by Florida. Persons who request other information shall be referred to the sending state.~~

~~(c)(d)~~ The release of inmates confined under the Interstate Corrections Compact will be in accordance with the instructions of the sending state.

~~(d)(e)~~ Inmates confined under the Interstate Corrections Compact shall be afforded the opportunity and shall be required to participate in programs of occupational training, industrial or other work on the same basis as inmates of Florida. Qualified inmates will be eligible for participation in Community Work Release Programs with the approval of the sending state. Approval will be obtained through the Interstate Corrections Compact Administrator.

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

~~(f)(g)~~ No change.

~~(g)(h)~~ Inmates may be returned to the sending state upon recommendations by the ICT Classification Team and subsequent approval by the Interstate Corrections Compact Administrator ~~Warden and the Secretary or his designee~~ for the following reasons:

1. ~~F~~ailure to adjust,
2. ~~P~~ersonal safety of an inmate in the sending state is no longer a factor,
3. ~~P~~ersonal safety of an inmate in the receiving state becomes a factor,
4. ~~A~~t the request of the sending state, or
5. ~~O~~ther valid reason(s).

~~(h)~~ If ~~When~~ the return of an inmate is finally approved the sending state shall be notified to retake the inmate within 30 days.

(6) The Interstate Corrections Compact Administrator shall coordinate the implementation of this section and shall conduct all routine correspondence with other party states.

Specific Authority 941.57, 944.09, 945.21 FS. Law Implemented 941.55, 941.56, 941.57 FS. History—New 7-7-81, Formerly 33-21.01, Amended 12-30-96, Formerly 33-21.001, Formerly 33-301.101, Amended.

**WATER MANAGEMENT DISTRICTS**

**St. Johns River Water Management District**

RULE TITLE:	RULE NO.:
Minimum Surface Water Levels and Flows and Groundwater Levels	40C-8.031

PURPOSE AND EFFECT: The purpose and effect of the proposed rule amendment will be to establish minimum water levels for the following lakes in the following counties: Emma and Lucy, Lake County; Charles and Halfmoon, Marion County; Avalon, Orange County; and South Como Park, Putnam County. The proposed rule amendment would also establish minimum water levels for a wetland system known as “The Savannah” in Volusia County. Additionally the proposed rule amendment will revise minimum water levels for the following lakes in the following counties: Apschawa South, Lake County; and Silver and Tarhoe, Putnam County.

SUBJECT AREA TO BE ADDRESSED: The proposed rule would establish or revise minimum water levels for the above listed lakes and wetland pursuant to the mandate of Section 373.042, Florida Statutes. Each of these levels would have an associated hydroperiod category. The terms herein are already defined in Chapter 40C-8, F.A.C. As with all minimum levels established by the District, if adopted, the minimum levels in this rule amendment would be used as a basis for imposing limitations on withdrawals of groundwater and surface water in the consumptive use permit regulatory process and for reviewing proposed surface water management systems in the environmental resource permit regulatory process.

SPECIFIC AUTHORITY: 373.044, 373.113 FS.

LAW IMPLEMENTED: 373.042, 373.0421 FS.

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

TIME AND DATE: 2:00 p.m., December 12, 2002

PLACE: St. Johns River Water Management District’s Governing Board Room, 4049 Reid Street, Palatka, Florida 32177

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Norma K. Messer, Rules Coordinator, St. Johns River Water Management District, Office of General Counsel, P. O. Box 1429, Palatka, Florida 32178-1429, (386)329-4459, Suncom 860-4459, email: nmesser@sjrwm.com.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

40C-8.031 Minimum Surface Water Levels and Flows and Groundwater Levels.

- (1) No change.
- (2) The following minimum surface water levels are established:

LAKE NAME	COUNTY	HYDROPERIOD CATEGORY	MINIMUM INFREQUENT <u>HIGH</u>	MINIMUM FREQUENT <u>HIGH</u>	MINIMUM AVERAGE <u>LEVEL</u>	MINIMUM FREQUENT <u>LOW</u>	MINIMUM INFREQUENT <u>LOW</u>
(a) No change.							
(b) APSHAWA	Lake SOUTH	Seasonally Flooded Typically Flooded Semipermanently Flooded		<del>86.0</del> 86.8	84.7		83.2
(c) through (d) No change.							
(e) <u>AVALON</u>	<u>Orange</u>	<u>Seasonally Flooded</u> <u>Typically Saturated</u> <u>Semipermanently Flooded</u>		<u>90.0</u>	<u>88.3</u>		<u>86.3</u>
(e) through (n) renumbered (f) through (o) No change.							
(p) <u>CHARLES</u>	<u>Marion</u>	<u>Seasonally Flooded</u> <u>Typically Saturated</u> <u>Semipermanently Flooded</u>		<u>40.6</u>	<u>39.3</u>		<u>37.9</u>
(o) through (ff) renumbered (q) through (hh) No change.							
(ii) <u>EMMA</u>	<u>Lake</u>	<u>Seasonally Flooded</u> <u>Typically Saturated</u> <u>Semipermanently Flooded</u>		<u>94.1</u>	<u>92.5</u>		<u>91.1</u>
(gg) through (nn) renumbered (jj) through (qq) No change.							
(rr) <u>HALFMOON</u>	<u>Marion</u>	<u>Seasonally Flooded</u> <u>Typically Saturated</u> <u>Semipermanently Flooded</u>		<u>49.7</u>	<u>47.9</u>		<u>46.5</u>
(oo) through (yy) renumbered (ss) through (ccc) No change.							
(ddd) <u>LUCY</u>	<u>Lake</u>	<u>Seasonally Flooded</u> <u>Typically Saturated</u> <u>Semipermanently Flooded</u>		<u>94.1</u>	<u>92.5</u>		<u>91.1</u>
(zz) through (xxx) renumbered (eee) through (cccc) No change.							
(dddd) <u>SAVANNAH</u>	<u>Volusia</u>	<u>Seasonally Flooded</u> <u>Typically Saturated</u> <u>Semipermanently Flooded</u>		<u>31.1</u>	<u>29.5</u>		<u>28.0</u>
(yyy) through (zzz) renumbered (eeee) through (ffff) No change.							
(gggg)( <del>aaaa</del> ) <u>SILVER</u>	<u>Putnam</u>	<u>Seasonally Flooded</u> <u>Typically Saturated</u> <u>Semipermanently Flooded</u>		<u>36.8</u> <del>36.5</del>	35.1		<u>33.7</u> <del>34.0</del>
(hhh)( <del>bbb</del> ) No change.							
(iii) <u>SOUTH COMO PARK</u>	<u>Putnam</u>	<u>Seasonally Flooded</u> <u>Typically Saturated</u> <u>Semipermanently Flooded</u>		<u>38.1</u>	<u>36.7</u>		<u>35.3</u>
(cccc) through (gggg) renumbered (jjjj) through (nnnn) No change.							
(oooo)( <del>hhh</del> ) <u>TARHOE</u>	<u>Putnam</u>	<u>Seasonally Flooded</u> <u>Typically Saturated</u> <u>Semipermanently Flooded</u>		37.0	<u>34.9</u> <del>36.0</del>		<u>33.5</u> <del>35.2</del>
(iii) through (qqq) renumbered (pppp) through (xxxx) No change.							
(3) through (4) No change.							

Specific Authority 373.044, 373.113 FS. Law Implemented 373.042, 272.0421, 373.103, 373.415 FS. History--New 9-16-92, Amended 8-17-94, 6-8-95, 1-17-96, 8-20-96, 10-20-96, 11-4-98, 6-27-00, 2-13-01, 3-19-02.

**WATER MANAGEMENT DISTRICTS**

**South Florida Water Management District**

RULE CHAPTER TITLE: Minimum Flows and Levels

RULE CHAPTER NO.: 40E-8

PURPOSE AND EFFECT: The purpose and effect of the rule development is to establish minimum flows and levels for the Loxahatchee River & Estuary, in accordance with Chapter 373, Florida Statutes.

SUBJECT AREA TO BE ADDRESSED: Minimum flows and levels.

SPECIFIC AUTHORITY: 373.042, 373.044, 373.113, 373.171 FS.

LAW IMPLEMENTED: 373.042, 373.0421 FS.

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

TIME AND DATE: 9:30 a.m. – 4:30 p.m., December 9, 2002

PLACE: Clayton Hutchinson, Exhibit Hall A, 559 N. Military Trail, West Palm Beach, FL

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 Garrett Wallace, District Clerk, (561)682-6371, at least two business days in advance to make appropriate arrangements.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: For technical issues contact, John Zahina, telephone 1(800)432-2045, Extension 2824 or (561)682-2824 (internet: jzahina@sfwmd.gov). For procedural issues contact: 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 (internet: jjenniso@sfwmd.gov).

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT WILL BE AVAILABLE AT THE SUBJECT WORKSHOPS AND CAN BE OBTAINED AT THE SFWMD WEBSITE OR BY CALLING THE DESIGNATED SFWMD STAFF CONTACTS.

**DEPARTMENT OF HEALTH**

**Board of Osteopathic Medicine**

RULE TITLE: Patient Records; Costs of Reproduction;

RULE NO.:

Timely Release 64B15-15.003

PURPOSE AND EFFECT: The Board proposes to amend the rule to clarify osteopathic physicians' obligations relating to patient medical records.

SUBJECT AREA TO BE ADDRESSED: Release of medical records to patients and time limit for releasing records.

SPECIFIC AUTHORITY: 456.057, 459.005 FS.

LAW IMPLEMENTED: 456.057, 455.242 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE SCHEDULED AT THE BOARD'S NEXT MEETING TO BE HELD ON DECEMBER 7, 2002 IN ORLANDO, FLORIDA.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Pam King, Executive Director, Board of Osteopathic Medicine/MQA, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

64B15-15.003 Patient Records; Costs of Reproduction; Timely Release Reproducing Medical Records

(1) Any Osteopathic Physician who makes an examination of or administers treatment to any person shall upon request of such person or his/her legal representative person licensed pursuant to Chapter 459, F.S., required to release copies of all reports or patient medical records made of such examination or treatment, including x-rays. The furnishing of such copies shall not be conditioned upon payment of an unpaid or disputed fee for services rendered, but may be conditioned may condition such release upon payment by the requesting party of the reasonable costs of reproducing the records.

(2) through (3) No change.

(4) An Osteopathic Physician shall comply with a patient's written request for copies of records and reports in a timely manner, with due regard for the patient's health needs. In the absence of circumstances beyond the control of the licensee, timely shall mean less than 30 days.

Specific Authority 456.057, 459.005 FS. Law Implemented 456.057, 455.242 FS. History--New 10-28-91, Formerly 21R-15.003, 61F9-15.003, 59W-15.003, Amended \_\_\_\_\_.

**DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

**Mental Health Program**

RULE CHAPTER TITLE: Licensure of Residential

RULE CHAPTER NO.:

Treatment Centers 65E-9

RULE TITLES: Applicability 65E-9.001

Definitions 65E-9.002

Licensure 65E-9.003

Staffing 65E-9.004

Admission 65E-9.005

Treatment Planning 65E-9.006

Length of Stay 65E-9.007

Discharge and Discharge Planning	65E-9.008
Rights of Children	65E-9.009
Restraint, Seclusion, and Time Out	65E-9.010
Medication Administration and Use of Psychotropic Medication	65E-9.011
Program Standards	65E-9.012
Operating Standards	65E-9.013
Administrative Enforcement	65E-9.014

**PURPOSE AND EFFECT:** The purpose and effect of this chapter is to implement the provisions of s. 394.875(10), F.A.C., with respect to residential treatment centers for children and adolescents which specify licensure standards for admission; length of stay; program and staffing; discharge and discharge planning; treatment planning; seclusion, restraint and time out; rights of patients; use of psychotropic medications; and standards for operation of such centers.

**SUBJECT AREA TO BE ADDRESSED:** The subject area addressed is s. 394.875(10), Florida Statutes. The department, in consultation with the agency, must adopt rules governing a residential treatment center for children and adolescents which specify licensure standards for: admission; length of stay; program and staffing; discharge and discharge planning; treatment planning; seclusion, restraints, and time-out; rights of patients under s. 394.459, F.A.C.; use of psychotropic medications; and standards for the operation of such centers.

**SPECIFIC AUTHORITY:** 394.875(10), 394.875 FS.

**LAW IMPLEMENTED:** 394.875 FS.

**IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A PUBLIC HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.**

**THE PERSON TO BE CONTACTED WITH REGARD TO THE PROPOSED RULE DEVELOPMENT IS:** Michael Sorrell, Medical/Health Care Program Analyst, Bldg. 6, Room 297, 1317 Winewood Blvd., Tallahassee, Florida 32399-0700

**THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:**

65E-9.001 Applicability.

These rules shall apply to all residential treatment centers, including therapeutic group homes, under contract with the department to provide treatment services to children with an emotional disturbance or serious emotional disturbance who are admitted to services pursuant to Chapter 39 or Chapter 394, Florida Statutes.

Specific Authority 39.407, 394.875(10) FS. Law Implemented 394.875 FS. History—New

65E-9.002 Definitions.

(1) “Abuse” means any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child’s physical, mental, or

emotional health to be significantly impaired. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

(2) “Adolescent” means a person who is at least 13 years of age but under 18 years of age.

(3) “Administrator” means the chief administrative officer of a receiving or treatment facility or his or her designee.

(4) “Agency” or “AHCA” means the Agency for Health Care Administration and the terms are used interchangeably to refer to the Agency for Healthcare Administration.

(5) “Assessment” means the appraisal or evaluation of a child’s current condition based on but not limited to clinical and functional data, physical examination, medical history, and current symptomatology.

(6) “Behavior Analyst” means a Board Certified Behavior Analyst, or a Florida Certified Behavior Analyst with expanded privileges.

(7) “Brief Intervention” means when a staff member(s) physically redirects or briefly holds a child, without undue force and without the child’s permission, for five minutes or less. Such term does not include a physical escort or physical restraint.

(8) “Chemical restraint” means the administration of any drug to control a child’s behavior or restrict the child’s freedom of movement, and is not a standard treatment for the child’s medical or psychiatric condition.

(9) “Child” means any person under the age of 18 and, as used in this rule unless otherwise specified, includes the term “adolescent” as defined in s. 394.492(1), F.S.

(10) “Collocation” means the simultaneous operation by a provider of two or more programs on the same grounds or in the same building with complete separation of the children served by the programs.

(11) “Community Mental Health Practitioner” means an individual with, at a minimum, a bachelor’s degree from an accredited college or university with a major in counseling, social work, psychology, nursing, rehabilitation, special education, health education, or a related human services field. In addition, the practitioner must have documented training in the treatment of mental health disorders, human growth and development, evaluations, assessments, treatment planning, basic counseling and behavioral management interventions, case management, documentation, psychopharmacology, abuse regulations, patient rights and special clinical circumstances such as emergencies, suicide, and out-of-control behavior.

(12) “Contract” means a formal written agreement or purchase order executed between the department and a provider for the procurement of children’s mental health services. The term includes performance contracts, rate contracts, purchase orders, and subcontracts.

(13) “Cultural competence” means attaining and applying knowledge, skills, and attitudes to enable administrators and staff to provide effective care and treatment for diverse populations that respect the child and family’s individual values and beliefs.

(14) “Department” means the Department of Children and Family Services (DCF) unless otherwise specified.

(15) “DSM” means the latest edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

(16) “Direct care staff” means a staff member who has direct contact with the child and has primary responsibility, identified in their job description, for providing personal care, assistance, and supervision to a child.

(17) “Emergency safety intervention” means the use of restraint or seclusion as an immediate response to an emergency safety situation.

(18) “Emergency safety situation” means unanticipated child behavior that places the child or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention as defined in this section.

(19) “Employee” means all salaried and hourly wage personnel of the RTC, including therapeutic group home, as well as contracted persons, who may be professionals and licensed or certified pursuant to Florida law or other persons who may meet qualifications as set forth in this rule.

(20) “F.A.C.” means the Florida Administrative Code; the notebook-style publication containing these rules and the rules of all other agencies and departments.

(21) “F.S.” means the Florida Statutes; the books containing Florida’s legal statutes.

(22) “Family” means the child’s biological, adoptive or foster parent(s), guardian, siblings, grandparents, aunts and uncles, and other related or unrelated persons who have a significant relationship with the child. For children placed pursuant to Chapter 39, F.S., the term family also includes the child’s guardian ad litem.

(23) “Family centered care” means providing, within the scope of the treatment modality and provider setting, services to families in a manner that recognizes the family as the constant in the child’s life, facilitates family-professional collaboration, exchanges information in a complete and unbiased manner, honors the cultural, ethnic, and socioeconomic background of the family, respects different methods of coping, encourages and facilitates family to family networking and support. It also ensures, within the scope of the treatment modality and provider setting, that services are flexible, accessible, and comprehensive.

(24) “Governing body” means the board of trustees, the partnership, the corporation, the association, or the person or group of persons who maintain and control the provider organization and who are legally responsible for the operation of the provider organization.

(25) “Interstate Compact” means the Interstate Compact on the Placement of Children, governed by s. 409.401, F.S., which all states, the District of Columbia and the United States Virgin Islands have joined as members. The law applies to all interstate placements of children into a Florida licensed residential treatment center by a sending agency from a member state or jurisdiction, as defined in Article II (b) of s. 409.401, F.S., and includes placements by public and private agencies, parents, relatives and guardians.

(26) “Licensed Practitioner of the Healing Arts” means a licensed practitioner in the community mental health services program, and includes the following professionals licensed pursuant to Florida Statute: psychiatric nurses, registered nurses, advanced registered nurse practitioners, physician assistants, clinical social workers, mental health counselors, marriage and family therapists, and psychologists.

(27) “Mechanical restraint” means any device attached or adjacent to a child’s body that the child cannot easily remove that restricts freedom of movement or normal access to the child’s body. However, mechanical restraint does include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, protective helmets and supportive body bands, or other physical holding when necessary for routine physical examinations and tests for orthopedic, surgical and other similar medical treatment purposes or when used to provide support for the achievement of functional body position or proper balance or to protect a patient from falling out of bed or to permit a patient to participate in ongoing activities without the risk of physical harm.

(28) “Medication administration” means the obtaining and giving of a single dose of medication, prescription or over-the-counter, by an authorized person to a child for his or her consumption.

(29) “Neglect” means when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child’s physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child shall not, for that reason alone, be considered a negligent parent or legal custodian. Neglect of a child includes acts or omissions.

(30) “Physical restraint” means the application of physical force without the use of any device, for the purpose of restricting the free movement of a child’s body. Such term does not include a physical escort or brief intervention as defined in this section.

(31) “Physical Escort” means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a child who is acting out to walk to a safe location or to safely escort an individual from one area to another. However, an intervention shall be considered a physical restraint, as defined in this section, and not a physical escort, when an attempt to re-direct or guide a child is physically resisted and the situation escalates into the need to apply physical force which restricts freedom of movement.

(32) “Plan of correction” means a written document that specifies actions a provider will take and the time frame within which the provider will come into compliance with these rules.

(33) “Primary diagnosis” means the principle mental disorder that is the medically necessary reason for clinical care and the primary focus of treatment.

(34) “Provider” means an individual, organization, corporation, including subcontractor, that is under contract with the department to provide children’s mental health services in a residential treatment center.

(35) “Psychotropic medication” means any drug prescribed with the primary intent to stabilize or improve mood, mental status, behavioral symptomatology, or mental illness.

(36) “Residential treatment center” means a 24-hour residential program, including a therapeutic group home, which provides mental health treatment and services to children as defined in s. 394.492(5) or (6), F.S., and which is a private for-profit or not-for-profit corporation under contract with the department. This rule does not change the Chapter 419 designation of a program as a “community residential home.”

(37) “Restraint” means a “chemical restraint”, “mechanical restraint” or “personal or physical restraint”, as defined in this section. Physical escort and brief intervention are excluded from this definition.

(38) “Screening” means the act of assessing the background of personnel and includes employment history checks, checks of references, local criminal records checks through local law enforcement agencies, fingerprinting, statewide criminal records checks through the Florida Department of Law Enforcement, and federal criminal records checks through the Federal Bureau of Investigation.

(39) “Seclusion” means the involuntary confinement of a resident alone in a room or an area which the resident is physically prevented from leaving.

(40) “Senior Community Mental Health Practitioner” means an individual with, at a minimum, a master’s degree from an accredited college or university with a major in the field of counseling, social work, psychology, nursing,

rehabilitation, special education, health education, or a related human services field; and two years of documented professional experience in providing services to persons with serious mental illness; and training in evaluations and assessments, treatment planning, treatment interventions, documentation, psychopharmacology, abuse regulations, patients rights, and special clinical circumstances such as emergencies, suicide, and out-of-control behavior. A senior community mental health practitioner may also be an individual with a master’s degree from an accredited college or university with a major in the field of counseling, social work, psychology, nursing, rehabilitation, special education, health education or a related human services field; and who is under the supervision of a licensed practitioner of the healing arts.

(41) “Serious injury” means any significant impairment of the physical condition of the child as determined by qualified medical personnel. The term includes, but is not limited to, burns, lacerations, bone fractures, substantial hematoma, and injuries to internal organs, whether self-inflicted or inflicted by someone else as defined in 42 CFR, Part 483.352.

(42) “Staff” means all owners, operators, employees, whether full-time, part-time and/or volunteers working in a residential treatment center, or other facility licensed by this rule, who may be employed or contracted by or do volunteer work for a person, corporation, or organization. The term does not include those who do not work on the premises where treatment is provided or either have no direct contact with a child or have no contact with a child outside of the presence of the child’s parent or guardian.

(43) “Supervision of self-administration of medications” means the provision of overseeing, guiding and assisting a child in the self-administration of a dose of medication, including prescription and over-the-counter medications.

(44) “Therapeutic Group Home” means a 24-hour residential program providing community-based mental health treatment and extensive mental health support services in a homelike setting to no more than 12 children who meet the criteria in s. 394.492(5) or (6), F.S. Unlike the Family Safety Residential Group Home and Behavioral Health Overlay Services (BHOS) provider whose primary mission is to provide a living environment, the primary mission of the therapeutic group home is to provide treatment of serious emotional disturbance. Distinguishing features of a therapeutic group home include the following:

(a) Meets the requirements of a single-family unit or community residential home as defined in Chapter 419, F.S.; the home is a non-secure or unlocked facility;

(b) The use of physical, mechanical or chemical restraints is prohibited;

(c) The use of seclusion is prohibited. If time out is used, the provider shall comply with the procedures outlined in subsection 65E-9.010(11), F.A.C.;

(d) Children or adolescents must be medically stable;

(e) Children or adolescents being served spend a significant amount of time in the community, attending school in the community and engaged in community recreational and social activities;

(f) Treatment and support services are designed to enable children being served to transition to a less restrictive level of care or be reunited with their family; and

(g) Treatment and other mental health services are provided in a family-like setting, and the provider may employ professional parents to staff the home. Extensive mental health support services and training are provided to the group home parents and staff.

(45) "Time-out" means the restriction of a child for a brief period of time (30 minutes or less) to a designated area from which the child is not physically prevented from leaving, for the purpose of providing the child an opportunity to regain self-control and when the use is consistent with the individual's treatment plan. This procedure is sometimes known by other names, such as "brief isolation" or "exclusion." Regardless of name, the actions taken define the procedure and are therefore subject to this rule.

(46) "Treatment" means the planned, medically necessary, individualized program of medical, psychological, and/or rehabilitative procedures, experiences and activities for a child designed to remediate symptoms of a principal mental or emotional disorder diagnosed on Axis I of a five-axes DSM diagnosis. The primary diagnosis and the child's level of functioning are the reasons for treatment and the focus of the clinical interventions provided. The need for treatment is determined by a mental health assessment, including the principal disorder and child's level of functioning.

(47) "Treatment plan" means the written compilation of the child's individualized treatment goals, measurable objectives and treatment services to be provided. The treatment plan is the goal-oriented, time limited, individualized plan of action, which directs the treatment and services provided for the child and family.

Specific Authority 39.407, 394.875(10) FS. Law Implemented 394.875 FS. History—New \_\_\_\_\_.

#### 65E-9.003 Licensure.

(1) An entity that holds itself out to be or acts as a residential treatment center shall obtain annually and maintain active licensure from the agency, unless specifically excluded from being licensed under the provisions of s. 394.875(5), F.S.

(2) Buildings that are separated from one another in which a similar level of residential care and treatment is provided may be licensed as one facility under the following circumstances:

(a) Such buildings are not separated by another building, part of a building, or buildings used for other purposes; and

(b) Such buildings are not separated by obstructions that impede the rapid movement of staff between them.

(3) Initial license – New construction or new operation. Applicants for an initial license shall submit a completed AHCA Form 3180-5004, Mar 2001, "Residential Treatment Centers for Children and Adolescents," which is incorporated by reference and may be obtained from the agency. The following supplemental information shall be attached to the application:

(a) Program narrative that contains the following:

1. List of services provided, including a description of each service;

2. Staffing pattern description, including the hours and days of on-premises and on-call staff coverage, and the number and types of staff on duty for each shift; and

3. Resident population description, based on the criteria in Rule 65E-9.005, F.A.C.

(b) Table of organization, including all management levels between the residential treatment center and the governing board.

(c) Résumé of the residential treatment center administrator.

(d) Fiscal information, including a current balance sheet and a statement of operation projecting revenues, expenses, taxes, extraordinary items and other credits and charges for the first six months of operation.

(e) Proof of liability insurance coverage from a licensed insurer in an amount not less than \$300,000 per occurrence with a minimal annual aggregate of not less than \$1,000,000.

(f) Copy of a satisfactory fire safety inspection report completed within the last 365 days shall be obtained from the local fire authority.

(g) Copy of a satisfactory sanitation inspection report completed within the last 365 days shall be obtained from the county health department of the county in which the facility is located.

(h) For therapeutic group homes that will be licensed for one to 12 beds, a completed DCF Form 1786, "Community Residential Home Sponsor Form," which is incorporated by reference and may be obtained from the department.

(i) For facilities that will be licensed for 13 beds or more, a signed statement from the local governing authority that the facility has met local zoning requirements.

(j) If accredited, proof of current accreditation from Joint Commission on Accreditation of Healthcare Organizations (JCAHO), Commission on Accreditation of Rehabilitation Facilities (CARF), Council on Accreditation for Children and Family Services (COA), or the National Committee for Quality Assurance (NCQA). Proof of accreditation shall include:

1. A copy of the accreditation award letter;

2. A copy of the accreditation certificate;

3. A copy of the accreditation report; and

4. A copy of any follow-up reports to or from the accrediting organization.

(k) Proof of the legal right to occupy the property. Proof may include copies of warranty deeds, or copies of a lease or rental agreement, contracts for deeds, quitclaim deeds, or other such documentation.

(l) Proof that the corporation is active with the Florida Department of State, Division of Corporations.

(m) A copy of the signed contract with the department.

(4) A new facility may be provided a 90-day probationary license after the completed application has been verified for compliance with applicable statutes and rules. The probationary period may be extended for an additional 90 days if the applicant has substantially complied with the requirements for licensure, and if action has been initiated to satisfy all of these requirements. When it is determined that the facility is endangering the health and safety of persons receiving services, the probationary license must be cancelled by the Agency.

(5) Renewal license.

(a) An applicant for renewal of a license shall apply to the agency no later than 90 days before expiration of the current license. Failure to submit the renewal application at least 90 days prior to the expiration of the license will result in a fine as authorized under s. 394.879(4), F.S.

(b) Applicants for a renewal license to operate a residential treatment center shall submit:

1. A completed AHCA Form 3180-5004, March 2001, "Residential Treatment Centers for Children and Adolescents", which is incorporated by reference and may be obtained from the agency.

2. Fiscal information, including a current balance sheet.

3. Proof of liability insurance coverage from a licensed insurer in an amount not less than \$300,000 per occurrence with a minimal annual aggregate of not less than \$1,000,000.

4. Proof of current accreditation from a national accrediting agency, if applicable.

5. Proof that the corporation is active with the Florida Department of State, Division of Corporations.

6. A copy of the department's renewal contract.

7. The following supplemental information shall be attached to the application only if it has been revised since it was previously submitted to the agency.

a. The current program narrative which contains the following:

1. List of services provided, including a description of each service;

2. Staffing pattern description, including the hours and days of on-premises and on-call staff coverage, and the number and types of staff on duty for each shift; and

3. Resident population description, based on the criteria in Rule 65E-9.005, F.A.C.

b. Table of organization, including all management levels between the residential treatment center and the governing board.

c. Résumé of the residential treatment center administrator.

d. Fiscal information, including a current balance sheet.

(6) Change of ownership or change of licensed operator.

(a) An applicant for a change of ownership or change of licensed operator shall submit an application that meets the requirements of subsection 65E-9.003(3), F.A.C., to the agency at least 30 days before the change is effective.

(b) The transferor shall be responsible and liable for:

1. The lawful operation of the facility until the date the transferee is licensed by the agency.

2. All penalties imposed against the facility for violations occurring before the date of the transfer of ownership unless the penalty imposed is a moratorium on admissions or denial of the license. The moratorium on admissions or denial of the license remains in effect after the transfer of ownership, unless the agency has approved the transferee's corrective action plan or the conditions that created the moratorium or denial have been corrected, and may result in denial of license to the transferee in accordance with Chapter 120, F.S.

3. Any outstanding liability to the state, unless the transferee has agreed as a condition of sale or transfer to accept the outstanding liabilities and to guarantee payment therefore; except that, if the transferee fails to meet these obligations, the transferor shall remain liable for the outstanding liability and shall honor such liability by payment to the state prior to issuance of the new license or by executing such documents of indebtedness as the state shall require as a condition of this licensing process.

4. The transferor of a facility, the license of which is denied pending an administrative hearing, shall, as a part of the written transfer-of-ownership contract, advise the transferee that a plan of correction shall be submitted by the transferee and approved by the agency at least seven (7) days before the transfer of ownership and that failure to correct the condition which resulted in the moratorium on admissions or denial of the license shall be grounds for denial of the transferee's license.

(c) The transferee shall provide the agency with proof of legal right to occupy the property before a license may be issued. Proof may include copies of warranty deeds, or copies of a lease or rental agreement, contracts for deeds, quitclaim deeds, or other such documentation satisfactory to the department.

(d) When the provider receives documentation that the agency has determined that the application package for a change of ownership or a change of licensed operator contains all required documentation and the required fee has been paid, a 90-day probationary license may be issued. The probationary period may be extended for an additional 90 days if the

applicant has substantially complied with the requirements for licensure, and if action has been initiated to satisfy all of the remaining requirements.

(7) Accredited programs. Providers accredited by a national accrediting agency, including but not limited to the JCAHO, CARF, COA, or NCQA are not required to submit a program narrative, table of organization, or the résumé of the residential treatment center administrator with the application package.

(8) License fee. An application fee shall be submitted with the initial application, change of ownership or change of licensed operator application or capacity increase application, and with the annual renewal application. The fee is non-refundable. The fee shall be reasonably calculated annually by the agency to cover the cost of regulation. The formula for calculating this fee is the prorated cost of agency staff and expense needed for licensing and surveying residential treatment centers divided by the number of residential treatment centers, times the number of beds in the facility applying for a license.

(9) The license shall be displayed in a conspicuous location inside the facility.

(10) Enforcement of these rules shall be in accordance with s. 394.879, F.S., and s. 394.902, F.S.

(11) The provider shall allow department and agency staff to make scheduled or unannounced visits to a residential treatment center at any time in accordance with the provisions of s. 394.90, F.S. The provider shall also allow qualified evaluators to make scheduled visits for the purpose of conducting evaluations and suitability assessments as required by Chapter 39.407(5)(b) and (i), F.S.

Specific Authority 39.407, 394.875(10) FS. Law Implemented 394.875 FS. History—New \_\_\_\_\_.

#### 65E-9.004 Staffing.

(1) Personnel procedures. The provider shall have written personnel procedures for the recruitment, retention, and effective performance of qualified staff. The procedures shall define the types and numbers of clinical, managerial and direct care staff needed to provide children with care and treatment in a safe and therapeutic environment.

(2) Staff communication. The provider's personnel procedures shall ensure and require the inter-communication among staff of information regarding children necessary to the performance of each staff responsibility, including between working shifts, staff changes and consultations with professional staff. Where one staff member or one program group relies upon information provided through this required free interchange of information, these interactions shall be documented in writing and maintained in the respective children's case files.

(3) Staff composition. The staff composition shall be determined by the needs of the children being served, by the nature of the treatment program, and by this rule. The provider shall have sufficient numbers of professional, direct care, program and administrative staff to provide effective care and treatment as defined in the child's treatment plan. Staff shall be assigned duties consistent with their position, qualifications, training and experience. The provider shall have the following staffing, any of which may be part-time, if the required coverage is provided, except for those positions with a required specified staffing ratio:

#### (a) Psychiatrist.

1. For Residential Treatment Centers, the provider shall have on staff or under contract a psychiatrist who is board certified or board eligible in child and adolescent psychiatry to serve as medical director for the program and such position shall direct all aspects of mental health treatment provided for the children. A psychiatrist who consults with the board certified psychiatrist may provide back-up coverage. A psychiatrist shall be on call 24 hours a day, seven days a week, and shall participate in staffings.

2. For Therapeutic Group Homes, the provider shall have on staff or under contract a board certified or board eligible psychiatrist or have a definitive written agreement with a board certified or board eligible psychiatrist or an agency to provide psychiatric services to children in the home, including participation in staffings.

(b) Medical Doctor. The provider shall have on staff or under contract a pediatrician or family practitioner with training in the care of children and adolescents, or have definitive written agreements for licensed physicians to provide primary medical coverage.

#### (c) Registered nurse.

1. For Residential Treatment Centers that use seclusion or restraint or administer medications in their program, a registered nurse shall supervise the nursing staff. At a minimum, a licensed practical nurse shall be on duty 24-hours-a-day, 7-days-a-week. During the times that the children are present in the facility and normally awake, the nursing staff to child ratio shall be no less than 1:30, and during normal sleeping hours, the nursing staff to child ratio shall be no less than 1:40.

2. For Therapeutic Group Homes or Residential Treatment Centers who do not use restraint or seclusion in their program, the provider is not required to have a registered nurse or other nursing staff on duty, but shall have definitive written agreements for necessary nursing services.

(d) Psychologist. Each provider shall have on staff or under contract, at a minimum, one licensed psychologist or have definitive written agreements with an individual psychologist or agency to provide such services as needed.

(e) Direct care staff. At a minimum, two (2) direct care staff shall be awake and on duty at all times. In addition, the following direct care staff-to-child ratios shall be provided and maintained:

1. For Residential Treatment Centers:

a. During hours when children are present in the facility and normally awake, the direct care staff to child ratio shall be no less than 1:4; and

b. During hours when the children are normally asleep, the direct care staff to child ratio shall be no less than 1:6;

2. For Therapeutic Group Homes:

a. For children six years of age or older, the direct care staff to child ratio shall be no less than 1:6 during hours when children are present in the facility and normally awake; and

b. For children six years of age or older, the direct care staff to child ratio shall be no less than 1:10 during hours when the children are normally asleep.

c. If there are children under six years of age residing in the facility, the direct care staff to child ratio shall be no less than 1:4 during hours when children are present in the facility and normally awake; and no less than 1:6 when children are normally asleep.

3. Direct care staff shall not divide time on their shift between programs located in other areas of the facility or other buildings.

4. While transporting residents, the driver shall not be counted as the direct care staff providing care, assistance or supervision of the child.

(f) A Board Certified Behavior Analyst, a Florida Certified Behavior Analyst with expanded privileges or Community Mental Health Practitioner. If the provider's program includes behavioral programming, a certified behavior analyst or community mental health practitioner with documented training and experience in behavior analysis shall be employed on staff or under contract, either full or part time, to provide ongoing staff training and quality assurance in the use of the behavioral techniques, including the use of time-out procedures, point systems or level systems.

(g) The provider shall be able to demonstrate and provide as necessary, upon request, the ability to acquire and the past uses of the consultation services of dieticians, speech, hearing and language specialists, recreation therapists, and other specialists, when same will be or has been needed.

(4) Staff qualifications.

(a) The administrator shall have a master's degree in administration or be of a professional discipline such as social work, psychology, counseling, or special education and have at least two years administrative experience. The administrator may be an agency or corporate administrator, who is not located onsite and who is responsible for a number of programs operated by the agency or corporation. If the administrator is not routinely located on site, an individual qualified by training and experience who is routinely located on site must be

appointed in writing to act as the administrator's designee. A person with a baccalaureate degree may also qualify for administrator with seven years experience of child and adolescent mental health care and three years administrative experience. Persons occupying this position before July 1, 2001, or promulgation of this rule, whichever is later, may be allowed to continue in this position.

(b) The medical director shall have experience in the diagnosis and treatment of child and adolescent mental health and be board certified or board eligible in psychiatry with the American Board of Psychiatry.

(c) If the clinical director is not full-time, there shall be a full-time service coordinator who is a senior community mental health practitioner.

(d) Individual therapy shall be provided by an individual licensed under Chapter 491, F.S., or a master's level individual working under the direct supervision of an individual licensed under Chapter 491, F.S.

(e) Family therapy shall be provided by an individual licensed under Chapter 491, F.S., or a master's level individual working under the direct supervision of an individual licensed under Chapter 491, F.S.

(f) Group therapy shall be provided by an individual licensed under Chapter 491, F.S., or a master's level individual working under the direct supervision of an individual licensed under Chapter 491, F.S.

(g) Staff responsible for treatment and discharge planning shall have a minimum of a bachelors degree in psychology, counseling, social work, special education, health education or related human services field with at least two years of experience working with children with emotional disturbance. These staff shall be supervised by a master's level clinician.

(h) Direct Care Staff employed to work directly with children shall be at least 18 years of age and have a high school diploma or general education development (GED) certificate. Staff employed before the effective date of this rule who do not meet the above education criteria may continue to work at their current place of employment.

(5) Staff orientation and training.

(a) The provider shall have, and implement on an ongoing basis, a written plan for the orientation, ongoing training, and professional development of staff.

(b) The provider shall implement orientation and training programs for all new employees and ongoing staff training to increase knowledge and skills and improve quality of care and treatment services.

(c) The provider shall conduct orientation for each new employee during the first 2 weeks of employment. The orientation shall include specific job responsibilities, policies and procedures, care and supervision of children, and competency-based first aid and CPR.

(d) The provider shall document training received by staff, including staff name and position, training subject, date completed and signature of instructor. The documented training shall be filed in the staff member's personnel record.

(e) The provider shall implement a minimum of 40 hours of in-service training annually for all staff and volunteers who work directly with children. Continuing education for professional licenses may count towards training hours if the training covers the appropriate areas. This training shall cover all policies and procedures relevant to each position and shall, at a minimum, include each of the following:

1. Administrative:

a. Administrative policies and procedures and overall program goals;

b. Federal and state laws and rules governing the program;

c. Treatment plan development and implementation;

d. Discharge planning;

e. Identification and reporting of child abuse and neglect;

f. Protection of children's rights; and

g. Confidentiality.

2. Safety:

a. Disaster preparedness and evacuation procedures;

b. Fire safety;

c. Emergency procedures;

d. Violence prevention and suicide precautions; and

e. First aid and CPR, with competency demonstrated annually.

3. Child development:

a. Child supervision skills;

b. Children's physical and emotional needs;

c. Developmental stages of childhood and adolescence;

d. Family relationships and the impact of separation;

e. Substance abuse recognition and prevention; and

f. Principles and practices of child care.

4. Treatment services:

a. Individualized treatment that is culturally competent;

b. Treatment that addresses issues the child may have involving sexual or physical abuse, abandonment, domestic violence, separation, divorce, or adoption;

c. Behavior management techniques, including but not limited to use of restraint and seclusion, physical escort, brief intervention, time out, point systems or level systems, de-escalation procedures, and crisis prevention and intervention;

d. Treatment that supports the child's permanency goals; and,

e. The provider shall ensure ongoing training and be able to produce documentation of such training on the use of restraint and seclusion, physical escort, brief interventions, de-escalation procedures and crisis prevention and intervention.

(I) Before staff may participate in any use of restraint or seclusion, staff shall be competency trained to minimize the use of restraint and seclusion, to use alternative, non-physical, non-intrusive behavioral intervention techniques to handle agitated or potentially violent children, and to use restraints and seclusion safely.

(II) Staff shall complete a training course approved by the department and provided by individuals qualified by education, training, and experience. Competencies shall be demonstrated on a semiannual basis. Training requirements for all staff who are authorized to participate in the use of restraint and seclusion shall include:

(A) An understanding of the underlying causes, e.g., medical, behavioral and environmental, of consequential behaviors exhibited by the children being served;

(B) How staff behaviors can affect the behaviors of others;

(C) The use of de-escalation, mediation, active listening, self-protection and other techniques, such as time-out;

(D) Recognizing signs of respiratory and cardiac distress in children;

(E) Recognizing signs of depression and potential suicidal behaviors;

(F) Certification in the use of cardiopulmonary resuscitation;

(G) How to monitor children in restraint or seclusion; and

(H) The safe use of approved restraint techniques, including physical holding techniques, take-down procedures, and the proper application, monitoring and removal of restraints.

(III) Training requirements for staff who are authorized to monitor a child's condition and perform assessments while the child is in seclusion or restraint shall include:

(A) Taking vital signs and interpreting their relevance to the physical safety of the child;

(B) Tending to nutritional and hydration needs;

(C) Checking circulation and range of motion in the extremities;

(D) Addressing hydration, hygiene and elimination;

(E) Addressing physical and psychological status and comfort;

(F) Assisting children in meeting behavior criteria that would allow for the discontinuation of restraint or seclusion;

(G) Recognizing the child's appropriate behavior and readiness for the discontinuation of restraint or seclusion; and

(H) Recognizing the need for and when to contact a medically trained licensed practitioner or emergency medical services in order to evaluate and treat the child's physical status.

(6) Volunteers and students.

(a) A provider that uses volunteers to work directly with children shall:

1. Screen the volunteers in accordance with s. 394.4572, F.S.;

2. Develop descriptions of duties and specific responsibilities expected of each such student or volunteer;

3. Provide orientation and training, including policies and procedures, the needs of children in care, and the needs of their families;

4. Ensure that volunteers who perform any services for children have the same qualifications and training as a paid employee for the position and receive the same supervision and evaluation as a paid employee; and

5. Keep records on the hours and activities of volunteers.

(b) A provider that accepts students who will have direct contact with residents shall:

1. Develop, implement, and maintain on an ongoing basis a written plan describing student tasks and functions. Copies of the plan shall be provided to each student and his or her school;

2. Designate a staff member to supervise and evaluate the students;

3. Conduct orientation and training, including policies and procedures, the needs of children in care and the needs of their families;

4. Ensure that students do not assume the total responsibilities of any paid staff member (students shall not be counted in the staff to client ratio); and

5. Screen the students in accordance with s. 394.4572, F.S.

Specific Authority 39.407, 394.875(10) FS. Law Implemented 394.875 FS. History—New \_\_\_\_\_.

#### 65E-9.005 Admission.

(1) The following admission procedures do not apply to children placed in accordance with Chapter 985, F.S.

(2) The provider shall have and utilize written admission procedures that address:

(a) Admission criteria;

(b) List of materials and forms required from the parent, guardian or referring organization;

(c) Outline of the pre-placement procedures for the child, parent or guardian, the referring organization and the department; and

(d) Orientation for the child and parent or guardian, and guardian ad litem.

(3) Acceptance of a child for residential treatment in a residential treatment center, including therapeutic group home, (excluding children placed under Chapter 985, F.S.) shall be based on the assessed needs of the child, the determination that the child requires treatment of a comprehensive and intensive nature and the provider's ability to meet those needs.

(4) Children placed by the department (excluding children placed under Chapter 985, F.S.) and funded in full or in part by state, Medicaid or local matching funds shall be admitted only after they have been personally examined and assessed for suitability for residential treatment by a licensed psychologist

or psychiatrist who has at least three years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents and who has no actual or perceived conflict of interest with any inpatient facility or residential treatment center, whose written findings are that:

(a) The child has an emotional disturbance as defined in s. 394.492(5), F.S., or a serious emotional disturbance as defined in s. 394.492(6), F.S.;

(b) The emotional disturbance or serious emotional disturbance requires treatment in a residential treatment center;

(c) All available treatment that is less restrictive than residential treatment has been considered or is unavailable;

(d) The treatment provided in the residential treatment center is reasonably likely to resolve the child's presenting problems as identified by the qualified evaluator;

(e) The provider is qualified by staff, program and equipment to give the care and treatment required by the child's condition;

(f) The child is under the age of 18; and

(g) The nature, purpose and expected length of the treatment have been explained to the child and the child's parent or guardian and guardian ad litem.

(5) The provider may establish additional admission criteria to ensure that the program admits only children the program is capable of serving.

(6) Admission packet. The provider shall require documentation in the child's admission packet, including:

(a) The child's parent or guardian has given expressed and informed consent to treatment;

(b) A funding source has been secured for the expected duration of the treatment. If the department is the funding source, there shall be written authorization from the department's mental health program office that approved the funding;

(c) An initial discharge plan has been developed for the child and is included in the admission packet;

(d) The location of the parent or legal guardian or court ordered custodian with responsibility for medical and dental care, including consent for medical and surgical care and treatment and a statement signed by the parent or legal guardian, and a copy given to the parent or legal guardian, requiring the parent or legal guardian to notify the provider of any change in the parent's or legal guardian's address or telephone number;

(e) Order of court commitment or a voluntary placement agreement with parents, guardian, or legal custodian;

(f) Arrangements for family participation in the program, including phone calls and visits with the child;

(g) Arrangements for clothing, allowances and gifts;

(h) Arrangements regarding the child leaving the facility with or without the clinical director's consent;

(i) Written policies specifying the child's rights;

(j) Written acknowledgment of receipt and understanding by the parent or legal guardian and guardian ad litem of the provider's policy regarding the use of restraint or seclusion during an emergency safety situation;

(k) Psychiatric and psychological evaluations with diagnosis and prior treatment history and psychosocial evaluations, including family relationships, legal status and prior placement history;

(l) Educational evaluation, including current individual education plan and school placement; and

(m) Medical information, including a listing of current medications;

1. If a physical examination was not performed within the 90 days prior to admission and documentation of such examination was not provided, a physical examination by a licensed physician shall be initiated within 24 hours of admission;

2. The child's medical history;

3. Written consent from the child's parent or guardian for the provider to authorize routine medical and dental procedures for the child, and to authorize emergency procedures when written parental consent cannot be obtained; and

4. Immunization status and completion according to the U.S. Public Health Service Advisory Committee on Immunization Practices and the Committee on Control of Infectious Diseases of the American Academy of Pediatrics.

(7) Placement agreement. The provider shall have and make available upon request a written agreement between the provider, the child's parent, guardian, and the department, which shall be kept in the child's file and available for review by the department and agency. The written agreement shall be signed and dated by each of the parties involved. Any revisions or modifications to the written agreement shall be signed and dated. The agreement shall include, at a minimum:

(a) The frequency and types of regular contact between the child's family and the provider staff;

(b) A plan for sharing information about the child's care and development with the parent, guardian, the guardian ad litem, and the department;

(c) The family and the provider's participation in the ongoing evaluation of the child's needs and progress;

(d) The designation of staff responsibility for working with the child's parent, guardian, guardian ad litem and the organization that signs the placement agreement;

(e) Visitation plans for the child's parent, guardian, guardian ad litem or the department. The visitation plans must be flexible to accommodate work and other important schedules of the child's family;

(f) Provisions for service plan reviews;

(g) The financial plan for payment of care and any fees to be covered;

(h) The conditions under which the child will be released from the program;

(i) A designation of responsibility for aftercare services and, if the child is assessed as needing transition to adult mental health services, designation of responsibility for assisting with the transition;

(j) A written description of complaint procedures, including a method of appeal to the provider management for complaints not resolved to the satisfaction of the child or parent or guardian; and

(k) A statement signed by the parent or guardian acknowledging they are aware of their responsibility to keep the provider aware of any changes in their address or telephone number.

(8) Interstate compact.

(a) Before the provider accepts placement of a child from out-of-state, the provider shall receive written approval from the department's Office of the Interstate Compact on the Placement of Children. In order to receive written approval from the department, the provider shall require as part of the admission process that the person responsible for the child prepare an interstate compact placement request package and send it to the state Interstate Compact on the Placement of Children Office in their state of residence for processing and mailing to the department's Interstate Compact on the Placement of Children Office in Florida.

(b) This interstate compact placement request package shall contain an ICPC 100A Interstate Compact Placement Request, Form CF 794, Oct 96, which is hereby incorporated by reference, or a substantially similar form used by the state or jurisdiction of residence of the sending agency or person. It shall also contain a letter on the Florida Residential Treatment Center letterhead stationery indicating that the child has been accepted for placement, or that the child is being considered for placement, and any other supporting documents that may be required under Article III of the Interstate Compact. The signed, dated and approved ICPC 100A shall be evidence of the approval required by the department and shall be placed and maintained in the child's record.

(c) Within 10 business days of physical arrival of a child from out-of-state, the provider shall complete, date, and sign an ICPC 100B Interstate Compact Report on Child's Placement Status, Form CF 795, Oct 96, which is hereby incorporated by reference, place a copy of the form in the child's record, and mail the original and two copies to: Office of the Interstate Compact on the Placement of Children, Family Safety Program Office, Florida Department of Children & Families, 1317 Winewood Boulevard, Tallahassee, FL 32399-0700.

Specific Authority 39.407, 394.875(10) FS. Law Implemented 394.875 FS. History--New \_\_\_\_\_.

65E-9.006 Treatment Planning.

(1) Within ten business days after admission, a written treatment plan shall be developed with input from, interpreted to and signed and dated by the child, if capable, the child's parent(s) or guardian, foster parents or guardian ad litem, if applicable, a representative of the department, and any other party involved in the development of the plan, with a copy submitted to each. If a child is determined to be incapable of signing the treatment plan, a written justification of the determination must be placed in the child's record.

(2) For children admitted under s. 39.407, F.S., the provider shall also:

(a) Explain the treatment plan to the child, the child's Family Services Counselor, and the guardian ad litem; and

(b) Submit a copy of the plan to the child, guardian ad litem, and the department's district/regional office.

(3) The multi-disciplinary professional staff, including the psychiatrist, shall participate in the preparation of the treatment plan and any major revisions of it.

(4) The treatment plan shall include clinical consideration of the child's physical, behavioral, developmental, psychological, and chronological age, family situation, educational level, and social and recreational needs.

(5) The treatment plan shall include specific observable and measurable behavioral goals and objectives with expected treatment outcomes. The treatment objectives shall be stated in measurable and observable terms, including projected time frames, treatment modalities to be used, staff responsible for coordinating and carrying out specific objectives, expected length of stay and the designated person or organization to whom the child will be discharged.

(6) The treatment plan shall also include, with input from the child and parent or guardian, guardian ad litem, and other stakeholders (e.g.: Family Safety case manager, other community agencies or organizations) as necessary:

(a) Description of the presenting problem, including descriptions of behaviors and reason for admission;

(b) Treatment and services to be provided in response to the presenting problem and the child's assessed strengths and needs;

(c) The expected degree of the parent or guardian's involvement;

(d) Planned regular provider contact with the child's parent or guardian; and

(e) Description of the child and family's current and potential strengths and problems, service agencies with which the child has been or will be involved and other support systems that may contribute to the success of treatment.

(7) The provider shall review the treatment plan within 30 days of admission and at least monthly thereafter with input from the child and parent or guardian, guardian ad litem, and other stakeholders (e.g.: Family Safety case manager, other community agencies or organizations) to assess the

appropriateness and suitability of the child's placement in the program, to evaluate the child's progress toward treatment goals and determine if the child is ready to move to a less restrictive program.

(8) The provider shall prepare a written report of findings at a minimum of every 30 days and submit the report, and pending discharge plans, to the department and parent(s) or legal guardian.

Specific Authority 39.407, 394.875(10) FS. Law Implemented 394.875 FS. History--New \_\_\_\_\_.

65E-9.007 Length of Stay.

(1) The provider shall involve the child and the child's parent or guardian to the fullest extent possible at all stages of treatment planning and discharge planning toward the goal of reintegrating the child into the community.

(2) The child's discharge plan shall be reviewed and, if necessary, revised during each review of the treatment plan.

(3) The provider shall design individualized services and treatment for the child to address the child's presenting problems on admission with a goal of discharge to the community or to a step-down program within 120 days of admission for residential treatment centers and 180 days for therapeutic group homes. While it is understood that some children may require longer lengths of stay due to the child's presenting problems, diagnosis, and severity of symptomatology, treatment plans must be developed with the goal of discharge or step-down to a less restrictive placement within the time limits above.

Specific Authority 39.407, 394.875(10) FS. Law Implemented 394.875 FS. History--New \_\_\_\_\_.

65E-9.008 Discharge and Discharge Planning.

(1) The provider shall have and use on an ongoing basis a written procedure on discharge planning and aftercare services that specifies the availability of services and the persons responsible for implementation of the aftercare plan.

(2) Discharge planning shall begin at the time of admission. A discharge plan shall be developed, written and interpreted in collaboration with the child, parent or guardian, foster parents, department, and guardian ad litem, if applicable, within ten days of admission, and a projected date for discharge shall be included in the child's treatment plan. A copy of the discharge plan shall be given to the parent, guardian, or foster parent, the guardian ad litem, and the department.

(3) Discharge planning shall include input from the child, the child's parent or guardian, foster parents, department, and guardian ad litem.

(4) Discharge planning may include a period of transition into the community, such as home visits and meetings with community mental health service providers.

(5) Discharges shall be approved and signed by the treating psychiatrist.

(6) A child may be discharged only to the parent, guardian or placing organization, unless the provider is otherwise ordered by the court.

(7) The provider shall prepare a discharge summary, approved and signed by the administrator. A copy of this discharge summary shall be provided to the parent or guardian, guardian ad litem and department at least 30 days before the proposed discharge date, which, at a minimum, shall include:

(a) The initial formulation and diagnosis;

(b) A summary of treatment and services which have been provided, the outcomes of treatment in relation to the child's presenting problem on admission, and identification of needs for continuing treatment and services in the community following discharge;

(c) Recommendations for the child and parent or guardian following release from care, including referrals for community-based mental health services;

(d) The projected date of discharge and the name, address, telephone number and relationship of the person or organization to whom the child will be discharged; and

(e) A copy of the child's medical, dental, educational, medication and other records for the use of the person or organization who will assume care of the child following discharge.

(8) Aftercare plans shall be developed by the provider staff under the guidance of the clinical director and shall encourage the active participation of the child and parent or guardian and guardian ad litem.

(9) The provider shall have and utilize written procedures for follow-up care, including a written plan for follow-up services and at least one contact with the discharged child and his parent or guardian and guardian ad litem within the first 30 days following discharge.

(10) For adolescents age 17 or older, the provider shall assess their needs for continuing services in the adult mental health service system and assist them in planning for and accessing those services.

(11) Within 10 business days of the physical departure of a child placed from out-of-state, the provider shall complete, date, and sign an ICPC 100B Interstate Compact Report on Child's Placement Status, Form CF 795, Oct 96, which is hereby incorporated by reference, place a copy of the form in the child's record, and mail the original and two copies of the form to: Office of the Interstate Compact on the Placement of Children, Family Safety Program Office, Florida Department of Children & Families, 1317 Winewood Boulevard, Tallahassee, FL 32399-0700.

Specific Authority 39.407, 394.875(10) FS. Law Implemented 394.875 FS. History—New \_\_\_\_\_.

65E-9.009 Rights of Children.

(1) The provider shall protect children's rights under the federal and state constitutions and as specified in s. 394.459 and s. 394.4615, F.S. The provider shall also ensure that:

(a) Children in the program shall be informed of their rights. Children's rights shall be communicated in a language the child and the parent or guardian understands, including American Sign Language or through an interpreter or translator if needed. The provider shall explain and give a copy of resident's rights to the child and the child's parents or guardian and guardian ad litem at admission.

(b) Physical punishment and treatment modalities that place the child at risk of physical injury or pain or death, including electroconvulsive or other convulsive therapy, "cocoon therapy," or other hazardous procedures shall never be used.

(c) Children shall not be subjected to cruel, severe, unusual or unnecessary punishment or assigned excessive exercise or work duties, nor shall they be subjected to physical or mental abuse or corporal punishment.

(d) Children shall be free from restraint or seclusion that is imposed as a means of coercion, discipline, punishment, convenience or retaliation by staff, or as a substitute for treatment or supervision.

(e) Orders for restraint and seclusion shall not be implemented simultaneously.

(f) Children shall not be subjected to hazing, verbal abuse, coercion or remarks that ridicule them, their families or others.

(g) Children shall not be denied food, water, clothing, medical care, prescribed therapeutic activities, or contacts with family, counselors or legal representatives.

(h) Children shall not be exploited or required to make public statements to acknowledge gratitude to the provider program or perform at public gatherings.

(i) Identifiable pictures of children shall not be used without prior written consent of the parent or guardian. The signed consent form for any such usage shall be event-specific, indicate how the pictures will be used, and placed in the child's clinical record; and

(j) The child and the child's family or guardian shall have the right to inspect and request a copy of the child's records. The facility may charge a reasonable cost for copies, not to exceed the cost of copying.

(2) Visits, mail, and telephone. The provider shall have and shall implement on an ongoing basis a written procedure that encourages and supports family visits, mail, telephone calls, and other forms of communication with parents, family, friends or others with whom the child has a significant relationship. A copy of the procedure shall be provided to children, staff, parents and guardians, and to the department.

(3) Discipline and control. The provider shall have written and implement on an ongoing basis procedures regarding methods used for discipline and control of children. The

procedure shall include identification of staff authorized and trained to impose discipline and control, staff training requirements, methodology, monitoring, incident reporting, and quality improvement.

(4) Complaint and grievance. The provider shall have and implement on an ongoing basis a written complaint and grievance procedure that outlines the process available to children and their parents or guardians and guardian ad litem for addressing complaints and grievances. This procedure shall be written in a clear and simple manner and a copy shall be provided and explained to the child and parent or guardian and guardian ad litem upon admission.

(5) Child abuse and neglect.

(a) The provider, as a mandated reporter, shall report to the department all suspected cases of child abuse and neglect in accordance with Chapter 39 and s. 394.459, F.S.

(b) Each child shall have ready access to a telephone in order to report an alleged abuse, neglect or exploitation. The provider shall orally and in writing inform each child of the procedure for reporting abuse. A written copy of that procedure, including telephone number of the abuse hotline and reporting forms, shall be posted in plain view within eighteen inches of the telephone(s) designated for use by the children.

(c) The provider shall establish and implement on an ongoing basis a written procedure for immediate protection of the victim and prevention of a recurrence of the alleged incident pending investigation by the department.

(d) The provider shall require each staff member, upon hiring and every 12 months thereafter, to read and sign a statement summarizing the child abuse and neglect laws and outlining the staff member's responsibility to report all incidents of child abuse and neglect. Such signed statements shall be placed in each employee's personnel file.

(e) Residents' rights posters, including those with the telephone numbers for the Florida Abuse Hotline, Statewide Advocacy Council and the Advocacy Center for Persons with Disabilities, shall be legible, a minimum of 14 point font size, and shall be posted immediately next to telephones which are available for residents' use.

(6) Confidentiality related to HIV-infected children.

(a) The identity of any child upon whom an HIV test is performed and the child's HIV test result shall be disclosed to an employee of the department or child-caring or child-placing organization directly involved in the placement, care or custody of such child only when the employee or organization needs to know such information to provide:

1. Case-specific services, such as assessing needs, determining eligibility, arranging care, monitoring case activities, permanency planning or providing care for the child;

2. Case-specific supervision or monitoring of cases for eligibility or legal compliance or casework services; or

3. Case-specific clerical and vouchering support.

(b) The identity of a child upon whom an HIV test is performed shall be disclosed to a foster family or child-caring or child-placing organization licensed pursuant to Florida Statutes, which is directly involved in the care of such child and has a need to know such information. The identity of the child shall be disclosed only after the following conditions have been met:

1. The department or child-placing or child-caring organization has provided to the foster family or child-caring or child-placing organization all available information, including HIV test results, social information and special needs, in a manner that does not permit identification of the child, and

2. The prospective placement has agreed to accept the child and the decision to place the child in that specific placement has been confirmed.

(c) The child-caring, child-placing organization, foster home or adoptive home that has accepted an HIV-infected child for care shall be given a statement in writing which includes the following language: "This information has been disclosed to you from confidential records. The confidentiality of this record is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law."

(d) The child's record shall contain documentation of the date and time that the written statement was given to the child-caring, child-placing organization or to the foster or adoptive parents.

(e) The case files of HIV-infected children shall not be segregated or flagged in any way that would permit their identification as case files of HIV-infected children or in any way different from the files of non-HIV-infected children.

Specific Authority 39.407, 394.875(10) FS. Law Implemented 394.875 FS. History—New \_\_\_\_\_.

65E-9.010 Restraint, Seclusion, and Time-out.

(1) General requirements

(a) Restraint or seclusion shall only be used in an emergency safety situation.

(b) Restraint or seclusion shall not result in harm or injury to the child and shall be used only:

1. To ensure the safety of the child or others during an emergency safety situation; and

2. Until the emergency safety situation has ceased and the child's safety and the safety of others can be ensured, even if the restraint or seclusion order has not expired.

(c) Restraint or seclusion shall not be used for purposes of punishment, coercion, discipline, convenience, or retaliation by staff or to compensate for inadequate staffing.

(d) An order for restraint or seclusion shall not be issued as a standing order or on an as-needed basis.

(e) Restraint or seclusion shall be used in a manner that is safe and proportionate to the severity of the behavior and the child's chronological and developmental age; size; gender; physical, medical and psychiatric condition, including current medications; and personal history, including history of physical or sexual abuse.

(f) Only staff who have completed a competency-based training program that prepares them to properly use restraint or seclusion shall apply these procedures to children.

(g) Restraint that impedes respiration (e.g., choke hold or basket hold), places weight on the child's upper torso, neck, chest or back, or restricts blood flow to the head is prohibited.

(h) Ambulatory or walking restraints (e.g., shackles that bind the ankles and waist-wrist shackles) may only be used during transportation under the supervision of trained staff. The use of ambulatory or walking restraints is prohibited except for purposes of off-premise transportation.

(i) The provider's medical director shall be responsible for providing oversight of ongoing monitoring, quality improvement and staff training in the use of restraint and seclusion and in the use of less intrusive interventions.

(2) The standards for restraint or seclusion do not apply to physical escort, brief intervention or time-out.

(3) Provider procedures. The provider's procedures shall address the use of restraint, seclusion and time out. A copy of the procedures shall be provided to children and their parents or guardians, foster parents, and guardian ad litem upon admission, to all staff, and to the agency and department. The procedures shall include provisions for implementing the requirements of this section and the provider's strategies to:

(a) Reduce and strive to eliminate the use of restraint or seclusion;

(b) Prevent situations that might lead to the use of restraint or seclusion;

(c) Use alternative, non-intrusive techniques in the management of behavior;

(d) Train staff on how restraint or seclusion are experienced by children; and

(e) Preserve the child's safety and dignity when restraint or seclusion is used.

(4) Authorization of restraint or seclusion.

(a) Restraint or seclusion shall be used and continued only pursuant to an order by a board certified or board eligible psychiatrist or licensed physician with specialized training and experience in diagnosing and treating mental disorders and who is the child's treatment team physician or, if the child's treatment team physician is unavailable, the physician covering for the treatment team physician who meets these qualifications.

(b) The physician shall order the least restrictive intervention that is most likely to be effective in resolving the emergency safety situation.

(c) If the physician is not available on-site to order the use of restraint or seclusion, the physician's verbal order shall be obtained by, at a minimum, a registered nurse or other licensed staff, such as a licensed practical nurse (LPN), immediately after the initiation of restraint or seclusion. At the time the order is received, the registered nurse or other licensed staff, such as a LPN, shall consult with the physician about the child's physical and psychological condition and the order and consultation shall be documented in the child's case file.

(d) The physician's verbal order shall be followed with the physician's signature verifying the verbal order within 24 hours and the signed verification shall be maintained in the child's case file.

(e) The ordering physician shall be available to staff for consultation, at least by telephone, throughout the period of the intervention.

(f) Each order for restraint or seclusion shall:

1. Be limited to no longer than the duration of the emergency safety situation;

2. Not exceed two hours for children ages nine to 18 or one hour for children under age nine; and

3. Be documented, whether verbal or written, and maintained in the child's case file.

(g) If restraint or seclusion exceeds six hours in a 24-hour period for a child age nine to 18 or three hours for a child under age nine, there must be a written explanation as to why the child was not transferred to a more acute program. In addition, if a child is restrained three times within any 30-day period, or is in seclusion six times in a 30-day period, the provider will obtain the services of a Board Certified Behavior Analyst to assist the provider in conducting a behavior analysis of the child and developing an intervention strategy. The Board Certified Behavior Analyst will conduct training of the staff on implementation of the intervention plan, on monitoring the data the plan requires and will conduct follow up visits to ensure the integrity of the plan remains in place across shifts and locations.

(h) Within one hour of the initiation of restraint or seclusion, the ordering physician or other licensed staff, as permitted by the state and facility, (such as a psychiatric nurse, advanced registered nurse practitioner, physician assistant, or registered nurse) trained in the use of emergency safety interventions, shall conduct a face-to-face assessment of the physical and psychological well being of the child, including:

1. The child's physical and psychological status;

2. The child's current behavior;

3. The appropriateness of the intervention measures; and

4. Any physical or psychological complications resulting from the intervention.

(i) Each order for restraint or seclusion shall include:

1. The ordering physician's name;

2. The date and time the order was obtained; and

3. The emergency safety intervention ordered, including the length of time for which the physician authorized its use, which length of time shall not exceed the time limits set forth in subparagraph 65E-9.010(3)(g)2., F.A.C., above.

(5) Documentation. Staff shall document the intervention in the child's record, with documentation completed by the end of each shift during which the intervention begins and continues. Documentation shall include:

(a) Each order for restraint or seclusion;

(b) The time the emergency safety intervention began and ended;

(c) The specific circumstances of the emergency safety situation, the rationale for the type of intervention selected, and the less intrusive interventions that were considered or tried;

(d) Time-specific assessments of the child's physical and psychological condition;

(e) The name, position, and credentials of all staff involved in or witnessing the emergency safety intervention;

(f) Time and date of notification of the child's family or guardian and guardian ad litem;

(g) The behavioral criteria and assistance provided by staff to help the child meet the criteria for discontinuation of restraint or seclusion;

(h) Summary of debriefing of the child with staff;

(i) Description of any injuries sustained by the child during or as a result of the restraint or emergency safety intervention and treatment received for those injuries;

(j) Review and revision of the child's treatment plan, including a description of procedures designed to prevent the future need for or use of restraint or seclusion; and

(k) Before restraint or seclusion were ordered for the child, the ordering physician assessed whether there were pre-existing medical conditions or physical disabilities, history of sexual or physical abuse, or current use of psychotropic medication that could present a risk to the child and results of such review are documented in the physician's order for restraint or seclusion and the child's record.

(6) Consultation with treatment team physician. If the physician ordering the use of restraint or seclusion is not the child's treatment team physician, the ordering physician or the licensed individual authorized to receive the verbal order shall:

(a) Consult with the child's treatment team physician as soon as possible and inform the team physician of the emergency safety situation that required the child to be restrained or placed in seclusion; and

(b) Document in the child's record the date and time the team physician was consulted.

(7) Notification.

(a) Notification upon admission. At admission, the provider shall:

1. Explain and provide a written copy to the child and the child's parent, foster parent or guardian, and guardian ad litem of the provider's procedures regarding the use of restraint or seclusion. The provider shall document that the child and the parent, foster parents or guardian, and guardian ad litem were informed of the provider's policies on the use of restraint and seclusion. This documentation shall be filed in the child's record.

2. Communicate the procedures in a language the child and the parent or guardian understand, including American Sign Language or through an interpreter or translator if needed.

3. Include in the procedures contact information, including phone number and mailing address, of the Florida local advocacy council and Advocacy Center for Persons with Disabilities, Inc.

4. Consult with the child's parent or guardian or foster parent and determine if there are any known physical or psychological risks that would rule out the use of such interventions for the child. The results of such interview shall be documented in the child's record.

(b) Notification of use of restraint or seclusion.

1. As soon as possible after the initiation of each emergency safety intervention, the provider shall notify the parent or guardian or foster parent that the child has been restrained or placed in seclusion.

2. The provider shall document in the child's record that the parent or guardian or foster parent was notified, including the date and time of notification and the name of the staff person providing the notification.

(8) Monitoring of the child during and immediately after restraint.

(a) Staff trained in the use of emergency safety interventions shall be physically present and continually visually assessing and monitoring the physical and psychological well-being of the child and the safe use of restraint throughout the duration of the emergency safety intervention.

(b) If the emergency safety situation continues beyond the time limit of the physician's order for the use of restraint, the staff person authorized to receive the verbal order, as identified in paragraph 65E-9.010(4)(c), F.A.C., shall immediately contact the ordering physician to receive further instructions or new orders for the use of restraint and shall document such notification in the child's case file.

(c) A physician, or other licensed staff member as identified in paragraph 65E-9.010(4)(h), F.A.C., trained in the use of emergency safety interventions, shall evaluate and record the child's physical condition and psychological well-being immediately after the restraint is removed.

(9) Monitoring of the child during and immediately after seclusion.

(a) Staff trained in the use of emergency safety interventions and in assessment of suicide risk shall be physically present in or immediately outside the seclusion room, continually visually assessing, monitoring, and evaluating the physical and psychological well-being of the child in seclusion. Video monitoring shall not be used as a substitute for this requirement.

(b) A room used for seclusion shall:

1. Allow staff a full view of the child in all areas of the room; and

2. Be free of conditions that could be hazardous to the child, such as unprotected light fixtures and electrical outlets, or other fixtures, appliances or furnishings that the child could use to injure themselves.

(c) If the emergency safety situation continues beyond the time limit of the physician's order for the use of seclusion, the staff person authorized to receive the verbal order, as identified in paragraph 65E-9.010(4)(c), F.A.C., shall immediately contact the ordering physician to receive further instructions or new orders for the use of seclusion and such notification shall be documented and maintained in the child's case file.

(d) A physician or other licensed staff member, as identified in paragraph 65E-9.010(4)(h), F.A.C., trained in the use of emergency safety interventions, shall evaluate the child's physical condition and psychological well-being immediately after the child is removed from seclusion and documentation of such evaluation shall be maintained in the child's case file.

(e) Staff shall immediately obtain medical treatment from qualified medical personnel for a child injured during or as a result of an emergency safety intervention.

(10) Discontinuation of restraint or seclusion. As early as feasible in the restraint or seclusion process, the child shall be told the rationale for restraint or seclusion and the behavior criteria necessary for its discontinuation. Restraint or seclusion shall be discontinued as soon as the child meets the behavioral criteria.

(11) Post-restraint or seclusion practices.

(a) After the use of restraint or seclusion, staff involved in an emergency safety intervention and the child shall have a face-to-face discussion. Whenever possible, subject to staff scheduling, this discussion shall include all staff involved in the intervention. The child's parent or guardian shall be invited to participate in the discussion. The provider shall conduct the discussion in a language that is understood by the child and the child's parent or guardian. The discussion shall provide both the child and staff the opportunity to discuss the circumstances resulting in the use of restraint or seclusion and strategies to be used by the staff, the child, or others to prevent the need for the future use of restraint or seclusion. The discussion must occur within 24 hours of the emergency intervention, subject to the following exceptions:

1. Allowances may be made to accommodate the schedules of the parent(s) or legal guardian(s) of the child when they request an opportunity to participate in the debriefing and when staff deem their participation appropriate.

2. Allowances may be made to accommodate shift changes, vacation schedules, illnesses, and all applicable federal, state, and local labor laws and regulations.

(b) After the use of restraint or seclusion, the staff involved in the emergency safety intervention, and appropriate supervisory and administrative staff, shall conduct a debriefing session that includes a review and discussion of:

1. The emergency safety situation that required the intervention, including a discussion of the factors that caused or preceded the intervention;

2. Alternative, less intrusive techniques that might have prevented the need for use of the restraint or seclusion;

3. The procedures, if any, that staff are to implement in the future to prevent any recurrence of the use of restraint or seclusion; and

4. The outcome of the intervention, including any injuries that resulted from the use of restraint or seclusion and the treatment provided for those injuries.

(c) Staff shall document in the child's record that both debriefing sessions took place and shall include in that documentation the names of staff present for the debriefing, names of staff excused from the debriefing, and any changes to the child's treatment plan or facility procedures that resulted from the debriefings.

(d) The provider shall maintain a record of each emergency safety situation, the interventions used, and their outcomes. These records shall be maintained in a manner that allows for the collection and analysis of data for agency monitoring and provider performance improvement and shall be available for such purposes upon request.

(e) Staff shall document in the child's record all injuries that occur during or as a result of an emergency safety intervention, including injuries to staff resulting from that intervention.

(f) Staff involved in an emergency safety intervention that results in an injury to a child or staff shall meet with supervisory staff and evaluate the circumstances that caused the injury and develop a plan to prevent future injuries.

(g) The provider shall immediately notify the child's parent or guardian of any serious occurrence, including a child's death, a serious injury to a child, or a suicide attempt. The provider shall also report the serious occurrence to the department, the agency, and the state advocacy council the same day or no later than close of business the next business day for a serious occurrence that occurs after 5 p.m. or over a weekend. The report shall include the name of the child involved in the serious occurrence, a description of the occurrence, and the name, street address, and telephone number of the facility.

(12) Time-out.

(a) Time-out shall be used only if included in the child's treatment plan.

(b) The child's parent or guardian shall sign an informed consent form detailing the circumstances under which time-out will be used, consistent with the treatment plan, and a detailed description of how the procedure is to be implemented.

(c) Time-out shall be initiated only by staff who have completed competency-based training in the use of time-out and such training is documented in their personnel record.

(d) Time-out may take place either in or away from the area of activity or other children, such as in the child's room.

(e) The designated area shall be a room or area that is part of the living environment the child normally inhabits or has access to during routinely scheduled activities and from which the child is not physically prevented from leaving.

(f) If the child requires physical contact in order to move to the area or room, staff shall end the contact immediately once the child is in the designated area.

(g) The child shall not be physically prevented from leaving the time-out area.

(h) The criterion for being able to leave without further intervention shall be specified to the child at this time in a neutral manner.

(i) Time-out shall be terminated after the child meets the behavioral criterion for the specified period of time, which shall not exceed 5 minutes; and if the child meets the criterion earlier, staff shall end the procedure immediately.

(j) If the child has not been able to meet the criterion for exiting time-out within 30 minutes, staff shall notify the ranking clinician on duty or on-call, who shall assess how the procedure was implemented, assess the child's condition, and determine whether to end the procedure, reduce the exit criterion, or continue the procedure.

(k) When time-out is imposed, staff shall directly and continuously observe the child.

(l) The frequency and duration of time-out for any child shall be based on the professional judgment of the Board Certified Behavior Analyst or community mental health practitioner upon consideration of the child's age, maturity, health, and other factors.

(m) The child's treatment team shall review each instance of the use of time-out as soon as possible and no later than the next working day. This review shall consist of questioning the function of the behavior that resulted in the use of time-out, the appropriateness of the exit criteria and possible ways to prevent the target behavior. These reviews shall include graphic display of the data covering the period of time the child has been in the program.

(n) For each instance of use of time-out, staff who initiate the procedure shall document in the child's record:

1. The circumstances leading to the use of time-out;

2. The specific behavior criteria which had been explained to the child that would allow for discontinuation of time out;

3. When and how the child was informed of the behavior criteria;

4. The time the procedure started and ended; and

5. Any injuries sustained and treatment provided for those injuries.

(o) A separate time-out log shall be maintained that records:

1. The shift;

2. The staff who initiated the process;

3. The time the procedure started and ended;

4. The date and day of the week of each episode;

5. The age and gender of the child; and

6. Client ID.

(13) Brief Intervention.

(a) Brief Intervention does not require an order by a psychiatrist or licensed physician; however, providers shall meet the following standards when employing brief intervention:

1. Staff shall meet all training and competency requirements in subsection 65E-9.004(5), F.A.C., including crisis prevention and intervention techniques.

2. Providers shall also document each episode of brief intervention which shall include, at a minimum, the same documentation requirements as specified in paragraphs 65E-9.010(11)(n) and (o), F.A.C.

3. The child's treatment team shall review each instance of the use of brief intervention as soon as possible but no later than the following work day. This review shall consist of a discussion of the behavior that resulted in the use of brief intervention, the appropriateness of the intervention used, including the criteria for implementation and discontinuation of the intervention, alternative de-escalation techniques and possible ways to prevent the inappropriate behavior. These reviews shall include graphic display of the data covering the period of time the child has been in the program.

(b) If at any time it is determined that the brief intervention will not meet the desired outcome of brief intervention or if brief intervention is needed beyond 5 minutes, the staff shall immediately implement and follow the standards and procedures for physical restraint.

Specific Authority 39.407, 394.875(10) FS. Law Implemented 394.875 FS. History—New \_\_\_\_\_.

65E-9.011 Medication Administration and Use of Psychotropic Medications.

(1) The provider shall develop, implement and maintain written policies and procedures governing the administration of medication and supervision of and assistance with self administration of medication, which shall include but not be limited to management of the medication administration program, training, inventory control, accounting, and disposal

of medications. These policies and procedures shall be consistent with the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C., Chapter 893, F.S., the Drug Abuse and Prevention and Control Act; DEA compliance policy guidelines on disposal of controlled substances, C.F.R. 21, Title 21, Section 1307.21, Disposal of Controlled Substances, and related department rules and regulations.

(2) Children shall never be permitted to have medication in their possession or to take any medication without direct supervision of an authorized person.

(3) Psychotropic medication shall not be used as a substitute for treatment, for the convenience of staff, or in quantities that interfere with the child's treatment progress.

(4) The use of psychotropic medication shall be described in the child's treatment plan and shall include the desired goals and outcomes of the medication.

(5) Informed consent for the administration of psychotropic medication.

(a) Informed consent from the parents or legal guardian, of any child must be obtained by the provider prior to the administration of psychotropic medication. If the parent is unavailable or unwilling to give consent, or if the parent is unknown, or if the parent's parental rights have been terminated, a court order authorizing the administration of psychotropic medication must be obtained by the department when such administration is recommended by the child's physician.

(b) The court order authorizing the administration must be entered prior to the administration of the medication and such order filed in the child's case file.

(6) If the circumstances requiring the administration of the medication constitute an emergency, such administration shall be governed by the provisions of ss. 743.064 or 394.463(2)(f), F.S., as applicable.

(7) There shall be no pro re nata (PRN) orders for psychotropic medications.

(8) There shall be no standing orders for psychotropic medications.

(9) Children receiving antipsychotic medications shall be assessed for abnormal involuntary movements by a physician or registered nurse using a recognized standardized rating scale upon admission and quarterly thereafter.

(10) Refills for medications shall be ordered only by a physician or nurse licensed in the state of Florida.

(11) Administration of Medication by unlicensed staff.

(a) For therapeutic group homes or residential treatment centers with 12 beds or less, where services are rendered in a smaller home-like setting, unlicensed staff employed by the facility, who have satisfactorily completed a competency-based training for administration of unit dose medication, shall administer prescribed prepackaged, pre-measured, oral medications, prescribed topical, otic, nasal

and ophthalmic medications and rectal and vaginal suppository medications in accordance with Section 464.022(1), Florida Statutes.

(b) Medications requiring subcutaneous or intra-muscular administration will be administered, at a minimum, by a Florida licensed nurse.

(c) The medication administration course used to train unlicensed staff shall be eight hours, at a minimum, in length and must meet the following criteria:

1. The course must consist of at least the following topics:

a. Basic knowledge and skills necessary for safe and accurate medication administration and charting.

b. Roles of the physician, nurse, pharmacist, and direct care staff in medication ordering, dispensing, and administration.

c. Procedures for recording/charting medications.

d. Interpretation of common abbreviations used in administration and charting of medications.

e. Knowledge of facility medication system.

f. Safety precautions used in medication administration and charting.

g. Methods and techniques of medication administration.

h. Problems and intervention in the administration of medication.

i. Observation and reporting of medication side effects and adverse effects.

j. Observation and reporting of effects of medications including outcomes of psychotropic medication treatment.

k. Documenting and reporting of medication errors.

1. Appropriate storage of medications.

2. The content must be taught by a Florida licensed physician, consulting pharmacist, physician assistant, advanced registered nurse practitioner, or registered nurse.

3. Training must be competency-based and shall consist of lecture and a clinical practicum. This training shall be documented and such documentation filed in the staff member's personnel file.

4. During the practicum, the trainee must be observed twice administering medications error free during their regularly scheduled medication time. The observation must include error free charting completed by the trainee after the medication(s) has been administered. The practicum observations must be made by a Florida licensed registered nurse.

5. Administration of prescribed topical, otic, nasal and ophthalmic medications and rectal and vaginal suppository medications will only be completed by unlicensed staff authorized to do so following competency-based training and observation of proficiency by a licensed practitioner.

6. Monitoring of medication administration shall be performed, at a minimum, quarterly by the supervising registered nurse for each facility. In addition, a Florida registered nurse must be available to facility staff via telephone or paging device 24 hours per day.

7. At a minimum, four (4) hours of continuing education is required on an annual basis.

8. When a psychotropic medication is initiated, a registered nurse or pharmacist will assure or make provisions for the instruction of the facility staff regarding side effects and adverse effects of the prescribed medication, including when to notify the physician if undesirable side effects or adverse effects are observed.

9. All staff identified to receive training in medication administration must be high school graduates or have passed an equivalency exam (GED).

(12) Self Administration of Medication.

(a) For therapeutic group homes or residential treatment centers with 12 beds or less unlicensed staff employed by the facility, who have satisfactorily completed competency-based training in administering medication and supervising children with self administration of unit dose medication, shall be authorized to supervise with self administration of prescription and over-the-counter medications.

(b) Only children who have been assessed by a physician and determined to be capable of self-administering their medications shall be permitted to do so under the supervision of an authorized person. Documentation of such assessment and determination shall be filed in the child's medical records.

(c) Staff involved with the supervision of and assisting with self-administration of medications shall complete competency-based training of a minimum of four hours annually by a registered nurse or licensed pharmacist. This training shall be documented and filed in the staff member's personnel file.

(d) The course shall consist of at least the following topics:

1. Basic knowledge and skills necessary for providing supervision for self-administration of medication.

2. Understanding a prescription label;

3. Procedures for recording/charting medications in the medication log.

4. Interpretation of common abbreviations used in administration and charting of medications.

5. Observation and reporting of side effects, adverse effects and outcomes of psychotropic medication treatment.

(e) Upon completion of the course, the trainee shall be able to demonstrate the ability to:

1. Measure liquid medications, break scored tablets, and crush tablets in accordance with prescription directions;

2. Recognize the need to obtain clarification of an "as needed" prescription order;

3. Recognize a medication order which requires judgment or discretion, and advise the child, child's health care provider or facility employer of the inability to assist in the administration of such orders;

4. Complete a medication observation record;

5. Retrieve and store medication; and

6. Recognize the general signs of adverse reactions to medications and report such reactions.

(13) Storage of Medications.

(a) All drugs, including nonprescription stock drugs, shall be stored under double lock (e.g., a locked cabinet within a locked room or in a locked container within a locked cabinet).

(b) External and internal medications and ophthalmic preparations shall be stored separately from each other.

(c) Each child's medications shall be stored separately from each other.

(d) Poisons and other toxic chemicals shall not be stored in a medication storage area.

(e) No medication shall be repackaged by facility staff.

(14) Telephone physician orders for medication may only be accepted by another physician, a licensed practical nurse, a registered nurse, a physician's assistant, ARNP or a licensed pharmacist. Telephone orders shall be immediately recorded in the child's medical record. Faxed physician orders are acceptable with a physician's signature. The original physician's order must be obtained within 72 hours of receipt of the faxed order.

Specific Authority 39.407, 394.875(10) FS. Law Implemented 394.875 FS. History—New \_\_\_\_\_.

65E-9.012 Program Standards.

(1) Collocation.

(a) Upon approval of the department, a provider may collocate other programs with programs serving children admitted under Chapter 394 or s. 39.407, F.S.

(b) The collocated programs may share administration and facility services, such as housekeeping, food preparation, and maintenance.

(c) Children admitted to these other programs shall be separated from the other children by staff supervision and shall not commingle or share a common space at the same time.

(2) Treatment.

(a) Treatment shall be individualized, child and family centered, culturally competent, and based on the child's assessed strengths, needs, and presenting problems that required admission to the program.

(b) Treatment shall be in accordance with the child's individualized treatment plan and discharge plan.

(c) The provider shall ensure that all staff caring for or providing treatment or services for the child:

1. Have current information about the child's treatment plan and goals, including the child's permanency goals if admitted pursuant to s. 39.407, F.S.; and

2. Direct all aspects of the child's treatment, services and daily activities toward meeting the child's specific treatment goals.

(d) The provider shall ensure that all staff providing a treatment modality to the child are qualified to provide that treatment modality.

(e) Treatment shall not be aversive or experimental.

(f) Treatment provided shall be consistent with nationally recognized standards.

(g) When multiple modalities of treatment are provided, such as psychotherapy, behavior management, and medication, the treatment shall be coordinated among the treatment professionals.

(h) Treatment progress shall be monitored on a continuous basis and the treatment adjusted as needed to meet the child's individual treatment goals.

(i) Proposed changes to the provider's treatment programs shall be reported in writing to and approved by the department.

(3) Activities.

(a) Basic routines shall be outlined in writing and made available to staff and children on a continuing basis.

(b) The daily program shall be planned to provide a framework for daily living and periodically reviewed and revised as the needs of the individual child or the living group change.

(c) Daily routines shall be adjusted as needed to meet special requirements of the child's treatment plan.

(d) A range of age-appropriate indoor and outdoor recreational and leisure activities shall be provided for children, including activities for evenings and weekends. Such activities shall be based on the group and individual interests and developmental needs of the children in care.

(e) Books, magazines, newspapers, arts and crafts materials, radios and televisions shall be available in accordance with children's recreational, cultural and educational backgrounds and needs.

(f) Provisions shall be made for each child to have daily time for privacy and pursuit of individual interests.

(4) Education. The provider shall arrange for or provide an educational program for children, which complies with the State Board of Education, Chapter 65A-15, F.A.C.

(5) Food and nutrition.

(a) If the provider serves meals to staff members, they shall serve staff and children substantially the same food, except when age or special dietary requirements dictate differences.

(b) The provider shall serve three well-balanced meals a day in the morning, noon, and evening and provide snacks if a child is admitted between meals or will be away from the facility at meal time. When children are attending school or are not present in the facility during mealtime, the provider shall make arrangements for the children's meals.

(c) The provider shall retain menus for a 12-month period, which shall be available for review. Menus shall be posted 24 hours before serving of the meal. Any change shall be noted. Menus shall be evaluated by a consultant dietician for nutritional adequacy at least monthly. The provider shall maintain records of dietician's reviews.

(d) The provider shall plan and prepare special diets as needed (e.g., diabetic, bland, high calorie). No more than fourteen hours shall elapse between the end of the evening and the beginning of the morning meal where a protein is served. Meals shall meet general requirements for nutrition published by the department or currently found in the Recommended Daily Diet Allowances, Food and Nutrition Board, or National Academy of Sciences.

(6) Health, medical, and emergency medical and psychiatric services.

(a) The provider shall develop and implement on an ongoing basis written procedures for health, medical, and emergency medical and psychiatric services describing how the provider obtains or provides general and specialized medical, surgical, psychiatric, nursing, pharmaceutical and dental services.

(b) The procedure shall clearly specify which staff are available and authorized to provide necessary emergency psychiatric or medical care, or to arrange for referral or transfer to another facility including ambulance arrangements, when necessary. The procedure shall include:

1. Handling and reporting of emergencies. Such procedures shall be reviewed at least yearly by all staff and updated as needed;

2. Obtaining emergency diagnoses and treatment of dental problems;

3. Facilitating emergency hospitalization in a licensed medical facility;

4. Providing emergency medical and psychiatric care; and

5. Notifying and obtaining consent from the parent or legal guardian in emergency situations. This procedure shall be discussed with the child's parent or guardian upon admission.

(c) The provider shall have a staff member on duty at all times who is trained and currently certified to administer first aid and CPR.

(d) The provider shall immediately notify the child's parent or guardian and the placing organization or department of any serious illness, any incident involving serious bodily injury, or any severe psychiatric episode requiring the hospitalization of a child.

(e) The provider shall have available, either within the provider organization or by written agreement with health care providers, a full range of services for treatment of illnesses and maintenance of general health. Agreements shall include provisions for on-site visits, office visits, and hospitalization.

(f) Children who are physically ill shall be cared for in surroundings familiar to them, if medically feasible, as determined by a physician. If medical isolation is necessary, there shall be a sufficient number of qualified staff available to give care and attention within a setting designed for such care.

(g) The provider shall provide for a complete physical examination for each child in its care every 12 months and more frequently if indicated.

(h) Immunization of all children shall be kept current in accordance with the American Academy of Pediatrics guidelines.

(i) Each staff member shall be required to report to the program's physician and note in the child's record any illnesses or marked physical dysfunction of the child.

(j) All staff shall have training in the handling of emergency medical situations.

(k) Emergency medical services shall be available within 45 minutes, 24 hours a day, seven days a week.

(l) The program physician's name and telephone number shall be clearly posted in areas accessible by staff and others within the facility.

(m) There shall be a first aid kit available to staff for each unit for facilities with multiple units and one per facility for single unit facilities. Contents of the first-aid kits shall be selected by the medical staff.

(n) The provider shall have a written agreement with a licensed hospital verifying that routine and emergency hospitalization will be available.

(7) Administration of medication.

(a) Pharmaceutical services, if provided, shall be maintained and delivered as described in the applicable sections of Chapters 465, 893, and 500, F.S., and the Board of Pharmacy rules.

(b) All medicines and drugs shall be kept in a double locked location. Prescription medications shall be prescribed only by a duly licensed physician or an ARNP or physician's assistant working under the direction of a licensed physician. An accurate log shall be kept of the administration of all medication including the following:

1. Name of the child for whom it is prescribed;
2. Physician's name, and reason for medication;
3. Quantity of medication in container when received;
4. Method of administration of medication (i.e., orally, topically, or injected);
5. Amount of medication administered;
6. Time of day and date medication is to be administered or self-administered and time of day and date medication was taken by the child; and
7. Signature of staff member who administered or supervised self-administration of the medication.

(c) The provider shall not permit medication prescribed for one child to be given to another child.

(d) Children capable of self-medication shall be supervised by a staff person who has been trained in medication supervision.

(e) For children not capable of self-medication, only a licensed nurse or unlicensed staff who has received training as required by this rule shall administer medications.

(8) Religious and ethnic heritage. The provider shall offer opportunities for children to participate in religious services and other religious and ethnic activities within the framework of their individual and family interests, treatment modality and provider setting. The option to celebrate holidays in the child's traditional manner shall be provided and encouraged.

(9) Interpreters, translators and language options. The provider shall establish procedures for identifying and assessing the language needs of each child and providing:

(a) A range of oral and written language assistance options, including American Sign Language;

(b) Written materials in languages other than English; and

(c) Oral language interpretation for children identified with limited English proficiency.

(10) Clothing and personal needs.

(a) The provider shall complete a written inventory of personal belongings of each child upon admission and account for all personal belongings upon discharge. This written inventory shall be maintained in the child's case file and a copy given to the parent, guardian, or foster parent at admission and discharge.

(b) The provider shall ensure each child has individual personal hygiene and grooming items readily available and has training in personal care, hygiene, and grooming appropriate to the child's age, gender, race, culture and development.

(c) The provider shall involve the child in the selection, care and maintenance of personal clothing as appropriate to the child's age and ability. Clothing shall be sized to fit the child and suited to the climate and season.

(d) The provider shall allow a child to possess personal belongings. The provider may limit or supervise the use of these items while the child is in care.

(e) When needed, protection from the weather or insects shall be provided, such as rain gear and insect repellent.

(f) The provider shall return all of the child's personal clothing and belongings to the parent or guardian when the child is discharged from the facility.

(11) Child's record.

(a) The provider shall have written procedures regarding children's records, including provisions to ensure that clinical records are maintained in accordance with s. 394.4615, F.S.

(b) The provider shall develop an individualized record for each child. The form and detail of the records may vary but shall, at a minimum, include:

1. Identification and contact information, including the child's name, date of birth, Social Security number, gender, race, school and grade, date of admission, and the parent or guardian's name, address, home and work telephone numbers;

2. Source of referral;

3. Reason for referral, e.g., chief complaint, presenting problem;

4. Record of the complete assessment;

5. DSM diagnosis;

6. Treatment plan;

7. Medication history;

8. Record of medication administered by program staff, including type of medication, dosages, frequency of administration, persons who administered each dose, and method of administration;

9. Documentation of course of treatment and all evaluations and examinations, including those from other facilities, such as emergency rooms or general hospitals;

10. Progress notes;

11. Treatment summaries;

12. Consultation reports;

13. Informed consent forms;

14. A chronological listing of previous placements, including the dates of admission and discharge, and dependency and delinquency actions affecting the minor's legal status;

15. Written individual education plan;

16. The discharge summary, which shall include the initial diagnosis, clinical summary, treatment outcomes, assessment of child's treatment needs at discharge, the name, address and phone number of person to whom the child was discharged and follow-up plans. In the event of death, a summary shall be added to the record and shall include circumstances leading to the death. All discharge summaries shall be signed by the treatment team physician;

17. For out of state children, copies of completed interstate compact ICPC 100A and ICPC 100B forms and a copy of each Interstate Compact Transmittal Memorandum and any attachments thereto that were sent to the Residential Treatment Center by the department's Interstate Compact on the Placement of Children Office;

18. Documentation of any use of restraint, seclusion or time out;

19. A copy of each incident report; and

20. Documentation that all of the various notices and copies required by these rules were properly given.

(c) Records of discharged children shall be completed within 15 business days following discharge.

(d) Recording. Entries in the child's record shall be made by staff having pertinent information regarding the child. Staff shall legibly sign and date each entry. Symbols and

abbreviations shall be used only when there is an explanatory notation. Final diagnosis, both psychiatric and physical, shall be recorded in full without the use of symbols or abbreviations.

(e) Maintenance of records.

1. Each provider shall maintain a master filing system, including a comprehensive record of each child's involvement in the program.

2. Records for children currently receiving services shall be kept in the unit where the child is being treated or be directly and readily accessible to the clinical staff caring for the child.

3. The program shall maintain a system of identification and coding to facilitate prompt location and ongoing updating of the child's clinical records.

4. Records may be removed from the program's jurisdiction and safekeeping only as required by law.

5. The provider shall establish procedures regarding the storage, disposal, or destruction of clinical records, which is compatible with the protection of rights.

6. Records for each child shall be kept for at least five years after discharge.

7. The provider shall maintain a permanent admission and discharge register of all children served, including name of the child, the child's parent or guardian, address, date of admission and discharge, child's date of birth, custody status, and address to which discharged.

(12) Quality assurance program. The provider shall develop and follow a written procedure for a systematic approach to assessing, monitoring and evaluating its quality of care and treatment, improving its performance, ensuring compliance with standards, and disseminating results. The quality assurance program shall address and include:

(a) Appropriateness of service assignment, intensity and duration, appropriateness of resources utilized, and adequacy and clinical soundness of care and treatment given;

(b) Utilization review;

(c) Identification of current and potential problems in service delivery and strategies for addressing the problems;

(d) A written system for quality improvement, approved by the provider's governing board, that includes:

1. A written delineation of responsibilities for key staff;

2. A policy for peer reviews;

3. A confidentiality policy complying with all statutory confidentiality requirements, state and federal;

4. Written, measurable criteria and norms assessing, evaluating, and monitoring quality of care and treatment; and

(e) A description of the methods used for identifying and analyzing problems, determining priorities for investigation, resolving problems, and monitoring to assure desired results are achieved and sustained;

(f) A systematic process to collect and analyze data from reports, including, but not limited to, incident reports, grievance reports, department and agency monitoring reports and self-inspection reports;

(g) A systematic process to collect and analyze data on process outcomes, client outcomes, priority issues chosen for improvement, and satisfaction of clients;

(h) A process to establish the level of performance, priorities for improvement, and actions to improve performance;

(i) A process to incorporate quality assurance activities in existing programs, processes and procedures;

(j) A process for collecting and analyzing data on the use of restraint and seclusion to monitor and improve performance in preventing situations that involve risks to children and staff. The provider shall:

1. Collect and regularly analyze, at least quarterly, restraint and seclusion data to ascertain that restraint and seclusion are used only as emergency interventions, to identify opportunities for improving the rate and safety of restraint and seclusion use, and to identify any need to redesign procedures;

2. Aggregate quarterly restraint and seclusion data by all settings, units or locations, including:

a. Shift;

b. Staff who initiated the procedure;

c. Details of the interactions prior to the event;

d. Details of the interactions during the event;

e. The duration of each episode;

f. Details of the interactions immediately following the event;

g. Date and time each episode was initiated and concluded;

h. Day of the week each episode was initiated;

i. The type of restraint used;

j. Whether injuries were sustained by the child or staff; and

k. Age and gender of each child for which emergency safety interventions had been found necessary.

3. Prepare and submit a report quarterly to the district/region mental health program office, including the aggregate data and:

a. Number and duration of each instance of restraint or seclusion experienced by a child within a 12 hour timeframe;

b. The number of instances of restraint or seclusion experienced by each child;

c. Instances of multiple uses of restraint or seclusion that extended beyond 12 consecutive hours; and

d. Use of psychoactive medications as an alternative for or to enable discontinuation of restraint or seclusion.

(k) Analysis of the use of time-out shall be conducted quarterly by clinical staff in consultation with the Board Certified Behavior Analyst and shall include:

1. Patterns and trends, for example, by shift, staff present, or day of the week;

2. Multiple instances of time-out experienced by a child within a 12 hour timeframe;

3. Number of episodes per child; and

4. Instances of extending time-out beyond 30 minutes.

Specific Authority 39.407, 394.875(10) FS. Law Implemented 394.875 FS. History--New

#### 65E-9.013 Operating Standards.

##### (1) Governing body.

(a) Each incorporated provider shall have a governing body that exercises authority over the provider's operation, policies and practices, and compliance with this rule.

(b) For-profit organizations shall maintain advisory boards that review the operational policies and practices, inspect facilities and programs, conduct interviews with children and staff members, and review matters affecting the care of and treatment for children.

(c) The governing body shall meet no less than once per year. Membership of the governing body shall not be fewer than five (5) members. The provider shall maintain a list of its members, which shall be available to the agency and shall:

1. Include the names, address, and terms of membership of each member; and

2. Identify each office and the term of that office.

##### (d) Responsibilities of the governing body:

1. Ensure organizational policies are in place for the administration and operation of the residential treatment center, including a qualified administrator;

2. Evaluate in writing the administrator's performance annually;

3. Approve the annual budget of anticipated income and expenditures necessary to provide the services described in its statement of purpose and approve the annual financial audit report;

4. Establish and ensure compliance with written personnel practices;

5. Maintain written minutes of all meetings, which shall be open to inspection by the agency and the department, upon request;

6. Develop written policies for selection criteria and rotation of its members; and

7. Develop and follow a written plan for the storage of records, including children's records, in the event of the closing of the program.

(2) Written procedures. The provider shall establish and implement written procedures that ensure compliance with all provisions of this rule.

##### (3) Organization.

(a) Program. The provider shall have a written description of its philosophy, purpose, objectives, treatment program, services and methods of service delivery. This document shall be available to the agency, the department, referral sources, the parent(s), guardian or foster parent(s) and the public upon request. The program description shall include:

1. A description of the target population including age and gender, types of disorders, and financial requirements;

2. The intake and admission process;

3. The types of treatment the provider can offer, based on a child's individual needs;

4. Methods for involving the parent or guardian in assessment, treatment, discharge, and follow-up care plans; and

5. An organizational chart describing each unit or division and its services, goals, procedures, staffing patterns and relationship to other services and divisions and how these contribute to the goals of the program.

(b) Administration. The provider shall have a written organizational plan, including an organizational chart, for administrative and clinical staff, which clearly explains the responsibilities of staff for services provided by the program. This plan shall include:

1. Lines of authority, accountability and communication; and

2. The names and credentials of the provider's clinical director and all clinical staff assigned responsibility on any shift for supervision of direct care staff. All clinical staff assigned supervisory responsibility shall have training or experience in child care activities and in the handling of medical and psychiatric emergencies.

(c) Funding. When applying for licensing, initial or renewal, the provider shall provide the agency with written documentation that it has sufficient funds to meet all requirements for licensure. Providers beginning operation shall provide evidence of sufficient funding for operation of the program for at least six months.

(d) Budget. The provider shall prepare a written budget annually.

(e) Audit. The provider shall have financial records audited annually.

(f) Fees. For children placed by the department and funded in full or in part by state, Medicaid or local matching funds, a sliding fee schedule shall be developed consistent with the provisions of Section 394.674(4), F.S. If fees are charged, the provider shall have a written policy describing the relationships between fees and services provided and the conditions under which fees are charged or waived. This policy shall be available to any person upon request.

(g) Solicitation of funds. If provider funding is obtained through public solicitation, a charitable permit for such solicitation shall be procured.

(h) Notification of changes. The provider shall provide written notification within 30 days to the department and the agency of changes in the provider's administrator, statement of purpose, program or admission criteria.

(i) Personnel policies, procedures and records.

1. Personnel policies and practices shall be designed, established, followed and maintained to promote the objectives of the provider's program and to ensure there are sufficient staff to support a high quality of care and treatment.

2. The provider shall have and implement written personnel procedures covering the following areas: job classification; pay plan; staff selection; probation or work-test period; tenure of office; dismissal; salary increases; health evaluations; holidays; leave policies; training programs; performance evaluation; employment benefits; and personnel records.

3. Each new employee shall be given a copy of the written personnel procedures when hired and documentation of receipt shall be maintained in the employee's personnel file. A procedure shall be established and implemented on an ongoing basis for notifying employees of changes in established policies and procedures.

4. There shall be clear job descriptions for all staff, including position title, immediate supervisor, responsibilities and authority, which shall be used as a basis for periodic evaluations by the supervisor.

5. Accurate and complete personnel records shall be maintained on each employee. Content shall include:

a. Current background information, including the application, references and documentation to justify initial and continued employment of the individual. Applicants for positions requiring licensure or accreditation shall be employed only after the provider has verified the license or accreditation. Evidence of renewal of license as required by the licensing agent shall be maintained in the employee's personnel record;

b. Current performance evaluation;

c. Records of pre-employment health examinations and subsequent health services rendered to employees necessary to ensure staff are able to perform their duties;

d. Medical reports verifying the absence of active communicable disease in staff; and

e. Record of any continuing education or staff development programs completed.

(j) Need for service. The provider shall provide a description of the specific services it provides or proposes to provide. Applicants who apply for an initial license shall furnish evidence that the services will be used by referral sources or other documentation of the need for the services, which shall be verified by the department.

(k) Incorporation. Agencies incorporated outside of the State of Florida must be authorized to do business under Florida law and such proof of authorization to do business in

Florida must be maintained in the provider's licensing file. A copy of the Letters of Incorporation in Florida or a current confirmation by the Secretary of State that Florida's corporate sales tax has been paid shall constitute proof of authority to operate in Florida.

(l) Delegation of authority. To protect the health and safety of children served, any delegation of an administrator's authority pursuant to Chapter 394 or these rules shall be documented in writing prior to exercising the delegated authority. This documentation shall be placed in the individual's employee record. Routine delegations of authority shall be incorporated in the provider's written procedures.

(m) Incident notification.

1. The provider shall report to the department's contract manager and the child's parent or guardian any serious occurrence involving a child, such as abduction, abuse, assault, accident, contraband, illness requiring hospitalization, sexual abuse, suicide, death or homicide, or major facility damage that threatens the health or safety of children.

2. The provider shall develop and implement on an ongoing basis a written procedure for incident notification, reflecting the requirements of the department's operating procedure CFOP 215-6, which is incorporated by reference.

(4) Fiscal accountability.

(a) The provider shall maintain separate accounting and fiscal records in the program and permit audits of such records and accounts at any reasonable time by the department and all funding agencies.

1. The provider shall have and follow a schedule of public rates and charges for all services provided and these shall be made available to all referral sources and families.

2. The provider shall have and maintain an insurance coverage that provides comprehensive liability insurance approved by the department with minimum coverage of \$300,000 per claim and \$1,000,000 aggregate.

(b) The department shall be permitted to audit and inspect the records, including all financial records, of all providers receiving state funds to ensure that contracted services are being provided as per their contract and which meet the standards of the department.

(c) Providers shall return to the department any funds paid for services not actually performed or any funds owed the department because of unallowable expenditures, as stipulated in the contract and within the timeframe defined in the contract.

(5) Facility standards.

(a) Buildings, grounds and equipment.

1. If the facility accepts children with physical handicaps, the facility shall be handicap accessible.

2. Grounds shall have space for children's activities, which shall be designed based on the type of activities offered and age appropriateness. The grounds shall be maintained in a safe and reasonably attractive manner and kept free of standing water, debris and other hazardous conditions.

3. Indoor and outdoor recreation areas shall be provided with equipment and safety measures designed for the needs of children according to age, physical and mental ability.

4. Safety regulations shall be established and followed for all hazardous equipment and children shall be prohibited from the use of such equipment.

5. Pools shall meet the requirements of Chapter 514, F.S.

6. The interior and exterior of buildings and the furniture and furnishings shall be reasonably attractive, in good repair and shall function for the purpose for which such building and furniture has been designed.

7. All heating, air conditioning, electrical, mechanical, plumbing and fire protection systems shall function properly.

8. Therapeutic group homes shall meet the requirements of Chapter 419, F.S., Community Residential Homes.

(b) Interior accommodations.

1. The facility's space and furnishings shall enable staff to respect the child's right to privacy and provide adequate supervision.

2. Furnishings shall be safe, attractive, comfortable, easy to maintain, and selected for suitability to the age and development of the children in care.

3. The facility shall have a common area large enough to accommodate group activities for the informal use by children.

4. The facility shall have one or more dining areas large enough to comfortably accommodate the number of persons normally served.

5. The facility shall have indoor recreation space large enough to accommodate the number of children scheduled for indoor activities.

6. Study areas shall have tables, chairs, lamps and bookshelves suitable for children's use.

7. For residential treatment centers, if administrative offices are housed in the facility, they shall be separated from the children's living area. Administrative offices do not include nursing or staff monitoring stations. Therapeutic group homes may have an office space in the facility for administrative purposes, including storage of child records.

8. There shall be space to allow staff and children to talk privately and without interruption.

9. Drinking water shall be readily available and easily accessible to children.

10. Clocks and calendars shall be provided.

11. Bathrooms shall be provided and shall be separated from halls, corridors and other rooms by floor to ceiling walls. Children shall not have to go through another child's bedroom to get to a bathroom. Each bathroom shall have:

a. At least one toilet, washbasin, and tub or shower easily accessible to the bedroom area for each six children;

b. Toilets that provide for individual privacy;

c. Bathrooms with non-slip surfaces in showers or tubs;

d. Toilet paper and holders, individual hand towels or disposable paper towels;

e. Distortion-free mirrors at a height convenient for use by children;

f. A place for toiletry storage; and

g. In a facility that houses children with physical handicaps that limit mobility, grab bars in toilet and bathing areas and doors wide enough to accommodate a wheelchair or walking device.

#### 12. Bedrooms.

a. Children shall not share sleeping areas with adolescents, and children or adolescents shall not share sleeping areas with adults.

b. Separate sleeping areas for boys and girls shall be provided.

c. The provider shall not permit children with physical handicaps that limit mobility to sleep above the first floor.

d. Bedrooms shall have at least 50 square feet of usable floor space per resident.

e. Bedrooms with multiple occupancy shall be limited to 4 occupants.

f. Bedrooms for children shall be separated from halls, corridors, and other rooms by floor to ceiling walls.

g. Children's bedrooms shall be ventilated, well-lighted and located convenient to a bathroom and shall have at least one window.

h. Bedrooms shall open into a corridor or a common use area.

i. Each bedroom shall be furnished with the following equipment for each child: personal storage space, such as a dresser wardrobe; space for hanging clothes; a bed and mattress in good repair, which is at least 36 inches wide and 72 inches long, bedding suited to the seasons and a pillow.

j. Clean sheets, pillow cases, and blankets shall be provided to each child upon arrival. Sheets and pillowcases shall be laundered weekly unless soiling requires they be cleaned with greater frequency.

k. Sleeping areas shall be assigned based on children's individual needs for group support, privacy or independence and shall be appropriate to their ages, developmental levels and clinical needs.

l. Bedroom doors shall not have vision panels except as clinically indicated and documented in the child's treatment plan.

m. Children shall be allowed to keep and display personal belongings and to add personal touches to the decoration of their rooms. The provider shall have and follow written procedures specifying what types of decoration are acceptable.

n. A seclusion room must:

1. Be a single room and shall be constructed to minimize the child's hiding, escape, injury or suicide;

2. Allow staff full view of the resident in all areas of the room;

3. Be free of potentially hazardous conditions such as unprotected light fixtures and electrical outlets;

4. Be a minimum of 60 square feet with ceilings a minimum height of 9 feet; and

5. Doors shall open outward.

#### 13. Ventilation and lighting.

a. The facility shall provide outside ventilation by means of windows, louvers, air conditioners, or mechanical ventilation in rooms used by children. Windows and doors used for outside ventilation shall have screens in good repair.

b. All areas of the facility occupied by children shall be temperature-controlled in a manner conducive to comfort, safety and privacy. Unless otherwise mandated by federal or state authorities, a temperature of 72 to 82 degrees F during waking hours and 68 to 82 degrees F during sleeping hours shall be maintained in all areas used by children. Cooling devices shall be placed or adjusted in a manner that minimizes drafts.

c. The facility shall provide sufficient lighting for the comfort and safety of children, including in classrooms, study areas, bathrooms and food service areas.

d. All incandescent bulbs and fluorescent light tubes shall be protected with covers or shields.

e. Hallways to bedrooms and bathrooms shall be illuminated at night.

f. The facility shall provide egress lighting that will operate if there is a power failure.

#### (6) Health, sanitation and safety.

(a) Before a license is issued, and annually thereafter, the facility shall be inspected by the county health unit to review compliance with state or local ordinances and health codes. Current written approvals or certificates of health and sanitary conditions and inspection reports shall be on file in the facility.

(b) The provider shall have and follow written health, sanitation and safety procedures.

(c) The use of door or window locks or closed sections of the building shall comply with all applicable safety and fire code standards.

(d) The facility shall have telephones, centrally located and readily available for staff and children's use in each living unit of the facility. Emergency numbers such as the fire department, police, hospital, physician, poison control center, ambulance and Florida Abuse Hotline shall be posted by each telephone. There shall be at least one cellular telephone available for use at all times in the event of power and telephone line outages.

(e) Poisons and toxic substances shall be prominently and distinctly marked, labeled as to contents, kept stored under lock and key, kept inaccessible to children, and used in a manner as not to contaminate food or constitute a hazard to children.

(7) Housekeeping.

(a) The facility and its contents shall be kept free from dust, dirt, debris and noxious odors.

(b) All rooms and corridors shall be maintained in a clean, safe, and orderly condition, and shall be properly ventilated to prevent condensation, mold growth, and noxious odors.

(c) All walls and ceilings, including doors, windows, skylights, screens, and similar closures shall be kept clean.

(d) All mattresses, pillows, and other bedding; window coverings, including curtains, blinds, and shades, cubicle curtains and privacy screens; and furniture shall be kept clean.

(e) Floors shall be kept clean and free from spillage, and non-skid wax shall be used on all waxed floors.

(f) Articles in storage shall be elevated from the floor.

(g) Aisles in storage areas shall be kept unobstructed.

(h) All garbage and refuse shall be collected daily, removed from the building and stored in a manner to make it inaccessible to insects and rodents.

(i) Garbage storage rooms and outside area shall be kept clean, vermin-proof, and large enough to store the garbage containers that accumulate. Outside storage of unprotected plastic bags, wet strength paper bags, or baled units containing garbage is prohibited. Garbage containers, dumpsters, and compactor systems located outside shall be stored on or above a smooth surface of non-absorbent material, such as concrete or machine-laid asphalt, that is kept clean and maintained in good repair.

(j) Garbage shall be removed from storage areas as often as necessary to prevent sanitary nuisance conditions. If garbage is disposed of on the premises, the method of disposal shall not create a sanitary nuisance and shall comply with the provisions of Chapter 62-7, F.A.C.

(k) Laundry facilities shall be located in an area which can be closed off and secured from other areas normally occupied by children. If children are allowed to participate in the laundering of their personal items, space for sorting, drying, and ironing shall be made available. If children are using laundry facilities, they shall be supervised by a staff member at all times.

(8) Fire safety.

(a) Before a license is issued and annually thereafter, the facility shall be inspected by the fire department or persons certified by the Office of the State Fire Marshall in fire prevention and safety. A current report of inspections and approval shall be on file in the facility. Residential treatment centers and therapeutic group homes shall comply with National Fire Protection Association 101, 2000 edition, Chapter 32 for new facilities or Chapter 33 for existing

facilities. Secure (locked) facilities must meet the requirements of Chapter 22 for new facilities or Chapter 23 for existing facilities.

(b) Electrical cords and appliances shall be maintained in a safe condition.

(c) Portable heating devices shall be used only in emergencies as defined in provider procedures.

(d) Flammable liquids or gas cylinders shall be inaccessible to children and shall not be positioned near flame or heat sources nor stored with combustible materials.

(e) Hallways, stairs and exit areas shall be well lighted and kept clear for safe exit.

(f) Fire drills shall be held at least monthly and rotated among all working shifts with written reports of the drills kept on file and available for inspection upon request.

(g) Written fire safety procedures shall include:

1. Staff training, briefing, and drills in prevention and actions to be taken in case of fires in structures and outdoors, including evacuation of buildings, calling emergency numbers, and the use of fire extinguishers; and

2. Regular inspection of fire extinguishers.

(9) Transportation safety.

(a) Vehicles used to transport children shall be maintained in safe operating condition.

(b) The number of persons in a vehicle used to transport children shall not exceed the number of seats and seat belts. Seat belts shall be used when transporting children. Buses without seat belts are exempt from this requirement.

(c) Buses or vans used to transport children shall be equipped with a first aid kit and a five pound fire extinguisher.

(10) Disaster and emergency preparedness.

(a) The provider shall develop and implement on an ongoing basis procedures for fire and other emergencies, including bomb threats, weather emergencies such as tornadoes and hurricanes. Procedures shall include the route of evacuation. Disaster preparedness and evacuation procedures shall address where and how children are transported during disasters, staffing, notification of families and the department, and how the provider shall obtain and provide general and specialized medical, surgical, psychiatric, nursing, pharmaceutical, and dental services.

(b) Evacuation routes shall be posted in conspicuous places and reviewed with staff and children on a semi-annual basis. Evidence of these periodic reviews shall be maintained in the facility's files and available upon request.

(11) Aquatic safety. For facilities that offer aquatic programs, the provider shall have and implement on an ongoing basis procedures that include:

(a) Children shall not participate in an aquatic activity without continuous supervision by staff trained in water rescue and lifesaving procedures.

(b) Before allowing children to participate in an aquatic activity, their swimming ability levels shall be assessed.

(c) The provider shall not permit a child to participate in an aquatic activity requiring higher skills than the child's swimming abilities, except during formal swimming instruction.

(d) A method, such as the buddy system, shall be established and enforced during aquatic activities.

(e) Lifesaving equipment shall be immediately accessible during aquatic activities. Minimum lifesaving equipment shall include:

1. A whistle or other audible signal device;

2. A first aid kit; and

3. A ring buoy, rescue tube, life jacket or other appropriate flotation device with an attached rope of sufficient length for the area.

(f) Life jackets shall be worn during all boating activities.

(g) Before any extended travel in a water craft, drills shall be practiced to approximate "man overboard" and capsiz situations.

Specific Authority 39.407, 394.875(10) FS. Law Implemented 394.875 FS. History--New

#### 65E-9.014 Administrative Enforcement.

(1) Provider staff shall cooperate with agency personnel during surveys, complaint investigations, monitoring visits, implementation of correction plans, license application and renewal procedures, and other activities necessary to ensure compliance with Chapter 394, F.S., and this rule.

#### (2) Inspections.

(a) Pursuant to s. 394.90, F.S., the agency shall conduct a survey, investigation, monitoring visit, or appraisal of a facility:

1. Prior to issuing an initial, change of ownership, or renewal license;

2. To monitor accredited facilities as authorized in s. 394.741, F.S.;

3. Upon receipt of an oral or written complaint of practices that threaten the health, safety, or well being of children living in the residential treatment center;

4. If the agency has reason to believe that the provider is violating a provision of Chapter 394, F.S., Part IV, or this rule chapter;

5. To determine if cited deficiencies have been corrected; and

6. To determine if a provider is operating without a license.

(b) The inspection shall consist of full access to and examination of the facility's physical premises, facility records and accounts, staff records, and children's records.

(c) Agency personnel shall have access to interview all staff, children, parents, guardians, and contract providers to determine compliance with the provisions of s. 394, F.S., Part IV and this rule.

(d) Agency personnel shall respect the private possessions of children and staff while conducting inspections.

#### (2) Statement of deficiencies and plan of correction:

(a) Prior to or in conjunction with a notice of violation issued pursuant to ss. 394.875, 394.903, F.S., and s. 120, F.S., the agency shall issue a statement of deficiencies which are observed by agency personnel during any inspection of a facility. The deficiency statement shall be issued within 10 working days of the agency's inspection and shall include:

1. A description of the deficiency;

2. A citation to the statute or rule violated;

3. A time frame for the correction of the deficiency;

4. A request for a plan of correction which shall include the time frame for correction of the deficiency; and

5. A description of the administrative sanction that may be imposed if the facility fails to correct the deficiency within the established time frame.

(b) The provider's written plan of correction must be received within 10 working days of receipt of the deficiency statement.

(c) Additional time may be granted to correct specific deficiencies if a written request is received by the agency prior to the time frame included in the agency's deficiency statement.

(3) Administrative Sanctions shall be imposed as authorized in s. 394.879(4), F.S., for:

(a) Deficiencies which are not corrected within the time frame set by the agency and for repeat deficiencies.

(b) Exceeding the licensed capacity;

(c) Violating a moratorium on admissions imposed under the provisions of this rule; and

(d) When a check submitted for payment of the license fee or for payment of an administrative fine is returned from the provider's bank for any reason, the agency shall add to the amount due a service fee of \$20 or 5% of the face amount of the check, whichever ever is greater, up to a maximum charge of \$200. Proceeds from this fee shall be deposited into the same account for which the check was written.

(e) Providers shall be notified by the agency of the imposition of sanctions, their right to appeal the sanction, the remedies available, and the time for requesting such remedies as provided under s. 120, F.S.

(f) Failure to submit a renewal application or a change of ownership application timely as required by rule.

#### (4) Moratorium on admissions.

(a) An immediate moratorium on admissions shall be placed on the facility when it has been determined that any condition in the facility presents an immediate or direct threat

to the health, safety, and well being of children in the facility. The following situations are examples of threats constituting grounds for a moratorium:

1. Inappropriate or excessive use of restraint and seclusion;
2. The presence of children who need more care than can be provided by the facility;
3. Food supply inadequate to provide proper nutrition to children;
4. Lack of sufficient staff who are skilled and competent to provide for or to meet the immediate needs of the children;
5. Notification by the local fire marshal's office or county health department that conditions exist which impose an immediate threat to the children; or
6. Failure to provide medications as prescribed.

(b) Agency personnel shall inform the provider that a moratorium on admissions may be imposed. The appropriate agency field office shall confirm placement of the moratorium by a telephone call to the provider. The effective date of the moratorium shall be the date the agency provides a written notification containing the following information:

1. Confirmation of placement of the moratorium;
2. A detailed explanation of the reasons for placing the moratorium;
3. Criteria the provider will be required to meet before the moratorium will be lifted;
4. Directions to contact the appropriate agency field office when the conditions have been corrected so that an appraisal visit can be conducted; and
5. Advising the provider of their right to request a hearing in accordance with Chapter 120, F.S.

(c) Moratoriums shall not be lifted until the deficiencies have been corrected and the agency has determined through an appraisal visit that there is no danger or threat to the children's health, safety, or well being. The removal of the moratorium shall be conveyed by a telephone call and confirmed by written notification.

(d) During the moratorium, no new children or previously discharged children shall be admitted to the facility. Children for whom the provider is holding a bed may return to the facility only after the child's parent or guardian has been informed that the facility is under a moratorium on admissions and with the prior approval of the local agency field office.

(e) When a moratorium is placed on a facility, the agency notice of the moratorium shall be posted and visible to the public at the facility until the moratorium is lifted.

Specific Authority 39.407, 394.875(10) FS. Law Implemented 394.875 FS. History--New.

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

RULE TITLE: Definitions  
 RULE NO.: 68A-1.004

PURPOSE AND EFFECT: The purpose and effect of the proposed rule development is to provide definitions for language in rules of the Fish and Wildlife Conservation Commission.

SUBJECT AREA TO BE ADDRESSED: Subject areas covered in the proposed rule include rule language definitions.

SPECIFIC AUTHORITY: Article IV, Section 9, Fla. Const.

LAW IMPLEMENTED: Article IV, Section 9, Fla. Const.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD IN CONJUNCTION WITH THE COMMISSION'S PUBLIC MEETINGS AT THE TIME, DATES AND PLACE SHOWN BELOW:

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PLACE: Exact locations will be noticed in the next available FAW

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Tim Breault, Division of Wildlife, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE PERSON TO BE CONTACTED REGARDING A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

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

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

RULE TITLE: Taking Wildlife on Roads and Rights-of-Way Prohibited  
 RULE NO.: 68A-4.008

PURPOSE AND EFFECT: The purpose and effect of the proposed rule development is to establish or revise prohibitions associated with taking wildlife on roads and rights-of-way.

SUBJECT AREA TO BE ADDRESSED: Subject areas covered in the proposed rule includes taking wildlife on roads and rights-of-way.

SPECIFIC AUTHORITY: Article IV, Section 9, Fla. Const.

LAW IMPLEMENTED: Article IV, Section 9, Fla. Const.

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

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

RULE TITLE: Quota Hunt Permits and Special-Opportunity Permits – Application; Selection; Issuance

RULE NO.:

68A-5.005

PURPOSE AND EFFECT: The purpose and effect of the proposed rule development is to establish or revise procedures for application, selection, or issuance of quota hunt or special-opportunity hunt permits.

SUBJECT AREA TO BE ADDRESSED: Subject areas covered in the proposed rule includes the application, selection and issuance of Quota Hunt Permits and Special-opportunity Permits.

SPECIFIC AUTHORITY: Article IV, Section 9, Fla. Const.

LAW IMPLEMENTED: Article IV, Section 9, Fla. Const.

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

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

RULE TITLES:	RULE NOS.:
Permits for Hunting or Other Recreational Use on Type I Wildlife Management Areas	68A-9.004
Special-use Permits; Short-term Use Permits; Fees; Special-Opportunity Hunting and Fishing	68A-9.007

PURPOSE AND EFFECT: The purposes and effects of the proposed rule development are to establish or revise provisions for administering recreational use permits and related fees on Type I Wildlife Management Areas and to establish provisions for administering special-use permits, short-term use permits, special-opportunity hunting and fishing permits, and any related fees.

SUBJECT AREA TO BE ADDRESSED: Subject areas covered in the proposed rule includes Special-use Permits; Short-term Use Permits; Fees; Special-opportunity Hunting and Fishing; and Recreational Use Permits.

SPECIFIC AUTHORITY: Article IV, Section 9, Fla. Const.

LAW IMPLEMENTED: Article IV, Section 9, Fla. Const.

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

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

RULE TITLE: Regulations Governing the Operation of Private Hunting Preserves  
 RULE NO.: 68A-12.010

PURPOSE AND EFFECT: The purpose and effect of the proposed rule development is to establish or revise rule provisions associated with the operation of private hunting preserves.

SUBJECT AREA TO BE ADDRESSED: The subject area covered in the proposed rules will be regulations pertaining to the release of captive-reared ducks on private hunting preserves for shooting purposes.

SPECIFIC AUTHORITY: Article IV, Section 9, Fla. Const.

LAW IMPLEMENTED: Article IV, Section 9, Fla. Const.

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

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

RULE TITLES:	RULE NOS.:
Open Season for Taking Game; Bag and Possession Limits	68A-13.001
Migratory Birds; Adoption of Federal Statutes and Regulations	68A-13.002
Hunting Regulations for Ducks, Geese, and Coots	68A-13.003
Open Season for Taking and Bag Limits for Non-Migratory Game and Issuance of Antlerless Deer Permits to Private Landowners	68A-13.004
Hunting on National Wildlife Refuges	68A-13.006
Hunting Regulations on Public Small-Game Hunting Areas	68A-13.007
Hunting Regulations for Migratory Birds Other than Ducks and Coots	68A-13.008

PURPOSE AND EFFECT: The purposes and effects of the proposed rule development are to (1) establish open seasons, bag limits and possession limits for taking game; (2) establish hunting regulations for ducks, geese, coots, and other migratory birds; (3) provide for adoption of Federal statutes and regulations pertaining to migratory birds and hunting on National Wildlife Refuges; (4) establish hunting regulations for public small-game hunting areas; and (5) provide for the issuance of antlerless deer permits to private landowners.

SUBJECT AREA TO BE ADDRESSED: Subject areas covered in the proposed rules include regulations for taking game including waterfowl and other migratory birds, issuance of antlerless deer permits to private landowners, public small-game hunting area regulations, adoption of Federal statutes and regulations, and hunting on National Wildlife Refuges.

SPECIFIC AUTHORITY: Article IV, Section 9, Fla. Const.

LAW IMPLEMENTED: Article IV, Section 9, Fla. Const.

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

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

RULE TITLE: Establishment Orders  
 RULE NO.: 68A-14.001

PURPOSE AND EFFECT: The purposes and effects of the proposed rule development are to amend the rule pertaining to Commission Establishment Orders, that establish land as Type I or Type II wildlife management areas, wildlife and environmental areas, refuges, bird sanctuaries, restricted hunting areas, critical wildlife areas, fish management areas, miscellaneous areas, or wild hog areas, to: (1) adjust acreage of said lands; and (2) make technical changes to Establishment Orders.

SUBJECT AREA TO BE ADDRESSED: The subject area to be addressed is establishment orders for wildlife management areas, wildlife and environmental areas, refuges, bird sanctuaries, restricted hunting areas, critical wildlife areas, fish management areas, miscellaneous areas, or wild hog areas.

SPECIFIC AUTHORITY: Article IV, Section 9, Fla. Const.

LAW IMPLEMENTED: Article IV, Section 9, Fla. Const.

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

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

RULE TITLES:	RULE NOS.:
General Regulations Relating to Type I Wildlife Management Areas	68A-15.004
Quota Permits; Antlerless Deer Permits	68A-15.005
Regulations Relating to Miscellaneous Areas	68A-15.006
Specific Regulations for Type I Wildlife Management Areas – Southwest Region	68A-15.061
Specific Regulations for Type I Wildlife Management Areas – North Central Region	68A-15.062
Specific Regulations for Type I Wildlife Management Areas – Northwest Region	68A-15.063
Specific Regulations for Type I Wildlife Management Areas – South Region	68A-15.064
Specific Regulations for Type I Wildlife Management Areas – Northeast Region	68A-15.065

PURPOSE AND EFFECT: The purposes and effects of the proposed rule development are to (1) establish or revise general regulations relating to Type I Wildlife Management Areas (WMA); (2) establish or adjust hunter quotas for Type I WMAs; (3) establish or modify specific area regulations for Type I WMAs; and (4) adjust hunting season dates on Type I WMAs to conform with proposed 2003-2004 hunting season dates for the appropriate hunting zone.

SUBJECT AREA TO BE ADDRESSED: Subject areas covered in the proposed rules include general regulations, quota hunt permits, hunting season dates and specific area regulations pertaining to Type I WMAs.

SPECIFIC AUTHORITY: Article IV, Section 9, Fla. Const.

LAW IMPLEMENTED: Article IV, Section 9, Fla. Const.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD IN CONJUNCTION WITH THE COMMISSION’S PUBLIC MEETINGS AT THE TIME, DATES AND PLACE SHOWN BELOW:

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

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

**RULE TITLES:** **RULE NOS.:**  
General Regulations Relating to Type II  
Wildlife Management Areas 68A-16.004  
Specific Regulations on Type II  
Wildlife Management Areas 68A-16.005

**PURPOSE AND EFFECT:** The purpose and effect of the proposed rule development is to consolidate the Wildlife Management Area system into one Type to reduce and simplify rules. All Type II WMA rules will be proposed for deletion, and current Type II WMAs will be consolidated with Type I WMAs.

**SUBJECT AREA TO BE ADDRESSED:** Subject areas covered in the proposed rules include hunting season dates, general regulations and specific area regulations pertaining to Type II WMAs.

**SPECIFIC AUTHORITY:** Article IV, Section 9, Fla. Const.

**LAW IMPLEMENTED:** Article IV, Section 9, Fla. Const.

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

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

**RULE TITLES:** **RULE NOS.:**  
General Regulations Relating to Wildlife  
and Environmental Areas 68A-17.004  
Specific Regulations on Wildlife  
and Environmental Areas 68A-17.005

**PURPOSE AND EFFECT:** The purposes and effects of the proposed rule development are to (1) establish general regulations relating to Wildlife and Environmental Areas (WEA); (2) establish or modify specific area regulations for WEAs; and (3) adjust hunting season dates on WEAs to conform with proposed 2003-2004 hunting season dates for the appropriate hunting zone.

**SUBJECT AREA TO BE ADDRESSED:** Subject areas covered in the proposed rules include hunting season dates, general regulations and specific area regulations pertaining to WEAs.

**SPECIFIC AUTHORITY:** Article IV, Section 9, Fla. Const.

**LAW IMPLEMENTED:** Article IV, Section 9, Fla. Const.

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

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

**RULE TITLE:** **RULE NO.:**  
Establishment and Protection of Critical  
Wildlife Areas 68A-19.005

PURPOSE AND EFFECT: The purpose and effect of the proposed rule development is to establish and protect areas critical to wildlife populations.

SUBJECT AREA TO BE ADDRESSED: Subject areas covered in the proposed rules include the establishment and protection of Critical Wildlife Areas.

SPECIFIC AUTHORITY: Article IV, Section 9, Fla. Const.

LAW IMPLEMENTED: Article IV, Section 9, Fla. Const.

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

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

RULE TITLE: Specific Fish Management Area Regulations RULE NO.: 68A-20.005

PURPOSE AND EFFECT: The purpose and effect of the proposed rule development is to establish regulations on specific fish management areas for taking and possessing freshwater fish or other activities such as swimming, use of firearms, or use of boats or other vehicles, that will ensure conservation of freshwater fish populations while providing for realization of their potential aesthetic, recreational, and economic values.

SUBJECT AREA TO BE ADDRESSED: Requirements for taking and possessing freshwater fish.

SPECIFIC AUTHORITY: Article IV, Section 9, Fla. Const.

LAW IMPLEMENTED: Article IV, Section 9, Fla. Const.

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THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Mr. Darrell L. Scovell, Division of Freshwater Fisheries, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)488-0331

THE PERSON TO BE CONTACTED REGARDING A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

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

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

RULE TITLES: Establishment RULE NOS.: 68A-21.002  
General Regulations Relating to Wild Hog Areas 68A-21.004

PURPOSE AND EFFECT: The purpose and effect of the proposed rule development is to establish or revise rule provisions associated with general regulation of wild hog areas.

SUBJECT AREA TO BE ADDRESSED: Subject areas covered in the proposed rules include general regulation of wild hog areas.

SPECIFIC AUTHORITY: Article IV, Section 9, Fla. Const.

LAW IMPLEMENTED: Article IV, Section 9, Fla. Const.

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

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

RULE TITLE: General Methods of Taking Freshwater Fish  
RULE NO.: 68A-23.002

PURPOSE AND EFFECT: The purpose and effect of the proposed rule development is to provide a forum for the public to provide input on proposed changes relating to general methods of taking freshwater fish.

SUBJECT AREA TO BE ADDRESSED: General methods of taking freshwater fish.

SPECIFIC AUTHORITY: Article IV, Section 9, Fla. Const.

LAW IMPLEMENTED: Article IV, Section 9, Fla. Const.

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PLACE: Exact locations will be noticed in the next available FAW

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Mr. Darrell L. Scovell, Division of Freshwater Fisheries, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)488-0331

THE PERSON TO BE CONTACTED REGARDING A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

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

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

RULE TITLE: Bag Limits, Length Limits, Open Seasons: Freshwater Fish  
RULE NO.: 68A-23.005

PURPOSE AND EFFECT: The purpose and effect of the proposed rule development is to establish bag limits, length limits, and season dates in order to protect and ensure conservation of freshwater fish populations.

SUBJECT AREA TO BE ADDRESSED: Bag limits, length limits, and season dates for freshwater fish.

SPECIFIC AUTHORITY: Article IV, Section 9, Fla. Const.

LAW IMPLEMENTED: Article IV, Section 9, Fla. Const.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD IN CONJUNCTION WITH THE COMMISSION'S PUBLIC MEETINGS AT THE TIME, DATES AND PLACE SHOWN BELOW:

TIME AND DATES: 8:30 a.m., January 22-24, 2003 – Fort Myers, Florida; 8:30 a.m., March 26-28, 2003 – Tallahassee, Florida; 8:30 a.m., May 28-30, 2003 – Kissimmee, Florida; 8:30 a.m., September 3-5, 2003 – Panhandle; and 8:30 a.m., November 19-21, 2003 – Florida Keys

PLACE: Exact locations will be noticed in the next available FAW

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Mr. Darrell L. Scovell, Division of Freshwater Fisheries, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)488-0331

THE PERSON TO BE CONTACTED REGARDING A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

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

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

RULE TITLE: Introduction of Non-Native Aquatic Species in the Waters of the State; Provisions for Sale and Inspection of Fish for Bait or Propagation Purpose; Diseased Fish  
RULE NO.: 68A-23.008

PURPOSE AND EFFECT: The purpose and effect of the proposed rule development is to provide a forum for the public to provide input on proposed changes relating to importation, selling, possession or transporting of live aquatic species or hybrids, including those species that may be classified as prohibited or restricted.

SUBJECT AREA TO BE ADDRESSED: Importation, selling, possession or transporting of live aquatic species or hybrids.

SPECIFIC AUTHORITY: Article IV, Section 9, Fla. Const.

LAW IMPLEMENTED: Article IV, Section 9, Fla. Const.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD IN CONJUNCTION WITH THE COMMISSION'S PUBLIC MEETINGS AT THE TIME, DATES AND PLACE SHOWN BELOW:

TIME AND DATES: 8:30 a.m., January 22-24, 2003 – Fort Myers, Florida; 8:30 a.m., March 26-28, 2003 – Tallahassee, Florida; 8:30 a.m., May 28-30, 2003 – Kissimmee, Florida; 8:30 a.m., September 3-5, 2003 – Panhandle; and 8:30 a.m., November 19-21, 2003 – Florida Keys

PLACE: Exact locations will be noticed in the next available FAW

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Mr. Darrell L. Scovell, Division of Freshwater Fisheries, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)488-0331

THE PERSON TO BE CONTACTED REGARDING A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

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

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

RULE TITLES:	RULE NOS.:
General Provisions for Taking, Possession and Sale of Reptiles	68A-25.002
Taking and Disposal of Nuisance Alligators Statewide	68A-25.003
Regulations Governing the Operation of Alligator Farms	68A-25.004
Regulations Governing Alligator Egg and Hatchling Collections on Lands Not Included in Alligator Management Programs on Private Lands	68A-25.031
Regulations Governing the Establishment of Alligator Management Programs on Private Lands	68A-25.032
Regulations Governing Statewide Alligator Trapping, Permitting, Taking and Sale	68A-25.042
Regulations Governing the Processing of Alligators and the Sale of Alligator Meat and Parts	68A-25.052

PURPOSE AND EFFECT: The purpose and effect of the proposed rule development is to establish regulations for taking and possessing alligators that will ensure conservation of alligator populations while providing for realization of their potential aesthetic, recreational, and economic values.

SUBJECT AREA TO BE ADDRESSED: Requirements for taking and possessing alligators and other reptiles.

SPECIFIC AUTHORITY: Article IV, Section 9, Fla. Const.

LAW IMPLEMENTED: Article IV, Section 9, Fla. Const.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD IN CONJUNCTION WITH THE COMMISSION'S PUBLIC MEETINGS AT THE TIME, DATES AND PLACE SHOWN BELOW:

TIME AND DATES: 8:30 a.m., January 22-24, 2003 – Fort Myers, Florida; 8:30 a.m., March 26-28, 2003 – Tallahassee, Florida; 8:30 a.m., May 28-30, 2003 – Kissimmee, Florida; 8:30 a.m., September 3-5, 2003 – Panhandle; and 8:30 a.m., November 19-21, 2003 – Florida Keys

PLACE: Exact locations will be noticed in the next available FAW

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Tim Breault, Division of Wildlife, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE PERSON TO BE CONTACTED REGARDING A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

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

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

RULE TITLES:	RULE NOS.:
Procedures for Listing, Delisting and Reclassifying Endangered, Threatened and Species of Special Concern	68A-27.0012
Designation of Candidate Species; Prohibitions, Permits	68A-27.0021
Designation of Endangered Species; Prohibitions; Permits	68A-27.003
Designation of Threatened Species; Prohibitions, Permits	68A-27.004
Designation of Species of Special Concern; Prohibitions; Permits	68A-27.005

PURPOSE AND EFFECT: The purposes and effects of the proposed rules are to add species to, reclassify species, and/or remove species from the Candidate Species, Endangered Species, Threatened Species and Species of Special Concern lists.

SUBJECT AREA TO BE ADDRESSED: Subject areas covered in the proposed rules include listing, delisting, and reclassifying species to the Candidate Species, Endangered Species, Threatened Species and Species of Special Concern lists.

SPECIFIC AUTHORITY: Article IV, Section 9, Fla. Const.

LAW IMPLEMENTED: Article IV, Section 9, Fla. Const.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD IN CONJUNCTION WITH THE COMMISSION’S PUBLIC MEETINGS AT THE TIME, DATES AND PLACE SHOWN BELOW:

TIME AND DATES: 8:30 a.m., January 22-24, 2003 – Fort Myers, Florida; 8:30 a.m., March 26-28, 2003 – Tallahassee, Florida; 8:30 a.m., May 28-30, 2003 – Kissimmee, Florida; 8:30 a.m., September 3-5, 2003 – Panhandle; and 8:30 a.m., November 19-21, 2003 – Florida Keys

PLACE: Exact locations will be noticed in the next available FAW

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Tim Breault, Division of Wildlife, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE PERSON TO BE CONTACTED REGARDING A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

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

## Section II Proposed Rules

### DEPARTMENT OF STATE

#### Division of Historical Resources

RULE CHAPTER TITLE:	Florida Main Street Program	RULE CHAPTER NO.:	1A-36
RULE TITLES:	Purpose	RULE NOS.:	1A-36.001
	Definitions		1A-36.002
	Program Information		1A-36.003
	Program Description		1A-36.004
	Eligibility Requirements		1A-36.005
	Application Procedures		1A-36.006
	Ad Hoc Florida Main Street Advisory Committee		1A-36.007
	Application Review		1A-36.008
	Program Administration		1A-36.009
	Active Local Programs		1A-36.010
	Secretary of State’s Florida Main Street Awards Program		1A-36.011

PROPOSE AND EFFECT: The Florida Main Street Program (Program), an established program of the Florida Department of State, Division of Historical Resources, provides training and technical assistance to aid the development of local historic preservation-based downtown revitalization programs. The Division recognizes the need to clarify and formalize the

procedures associated with the various aspects of administration of the Program. The proposed rule will meet that need.

SUMMARY: The proposed rule will clarify and formalize (a) procedures and criteria for selection of local organizations or agencies for participation in the Florida Main Street Program, (b) procedures for administration of the Florida Main Street Program, (c) criteria for achieving and maintaining Active Local Program status, and (d) procedures for conducting the annual Secretary of State’s Florida Main Street Awards Program.

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

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

SPECIFIC AUTHORITY: 267.031(1) FS.

LAW IMPLEMENTED: 267.031(5)(g) FS.

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

TIME AND DATE: 10:00 a.m., December 17, 2002

PLACE: R. A. Gray Building, 500 S. Bronough Street, Third Floor Conference Room, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: David Ferro, Supervisor, Architectural Preservation Services Section, Bureau of Historic Preservation, Division of Historical Resources, R. A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida 32399-0250, (850)245-6363, e-mail dferrp@mail.dos.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

1A-36.001 Purpose.

The purposes of this rule are to provide: (a) procedures and criteria for the selection of local organizations or agencies for participation in the Florida Main Street Program, (b) procedures for administration of the Florida Main Street Program, and (c) procedures for conducting the annual Florida Main Street Awards Program. The Bureau of Historic Preservation, Division of Historical Resources, Florida Department of State, administers the Florida Main Street Program, a technical assistance program for Florida communities, which encourages economic revitalization of traditional downtown commercial districts within the context of historic preservation.

Specific Authority 267.031(1) FS. Law Implemented 267.031(5)(g) FS. History—New