

(6) Each EMS provider shall maintain a copy of the patient care record as defined in subsection 64E-2.001(15), F.A.C., for a period of at least 5 years. This copy is considered to be the copy of record, shall contain an original signature by the lead care provider and certification number crew member ~~or an identification number~~ assigned to the lead care provider crew member and is certifiable as a true copy.

(7) through (13) No change.

Specific Authority 381.0011, 395.405, 401.30, 401.35 FS. Law Implemented 381.001, 381.0205, 395.401-395.405, 401.23, 401.25, 401.27, 401.30, 401.35, 401.411 FS. History--New 11-29-82, Amended 4-26-84, 3-11-85, Formerly 10D-66.60, Amended 11-2-86, 4-12-88, 8-3-88, 12-10-92, 11-30-93, 12-10-95, 1-26-97, Formerly 10D-66.060, Amended 7-14-99, 2-20-00, 4-15-01, 11-3-02, \_\_\_\_\_

64E-2.030 Emergency Medical Services Grants Procedures.

(1) through (2) No change.

(3) All grant award decisions shall be posted on a date and time certain at a specific location in Tallahassee, Florida. All grant award notices shall be published on the Bureau of Emergency Medical Services website at [www.doh.state.fl.us/ems](http://www.doh.state.fl.us/ems), at the date and time established in the FAW notice as outlined in (2) above. ~~The 21 days for denied applicants to file a petition for an administrative hearing as provided in Section 120.569 and Section 120.57, F.S., shall commence at the date and time of the award posting. If any award denial results in a timely and legally sufficient petition for administrative hearing as provided by Rule 28 106.201, F.A.C., and Rule 28 106.301, F.A.C., no award shall be made until final order and, if applicable, appellate proceedings have concluded, on the action if the denied applicant. The department shall proportionately adjust awards should the result of an administrative proceeding dictate.~~

(4) through (6) No change.

Specific Authority 401.121 FS. Law Implemented 401.111, 401.113, 401.121 FS. History--New 6-6-90, Amended 12-10-92, 1-26-97, Formerly 10D-66.205, Amended 8-4-98, 11-3-02, \_\_\_\_\_

NOTE: AT THE CONCLUSION OF ALL OF THE WORKSHOPS, A FINAL DRAFT OF THE PROPOSED RULE WILL BE POSTED ON THE BUREAU WEB PAGE PRIOR TO THE RULE GOING TO PUBLIC HEARING.  
P.O. B00829

## Section II Proposed Rules

### DEPARTMENT OF INSURANCE

RULE TITLES:	RULE NOS.:
Rate Filing Procedures	4-149.003
Form Filing Procedures	4-149.021

PURPOSE, EFFECT AND SUMMARY: To implement mandatory electronic filing of rate and form filings.

### SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: None.

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

SPECIFIC AUTHORITY: 624.308, 624.308(1), 627.410(6)(b),(e) FS.

LAW IMPLEMENTED: 119.07(1)(b), 624.307, 625.121, 627.410, 627.476, 627.807 FS.

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

TIME AND DATE: 9:00 a.m., January 29, 2003

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting the person listed below.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Frank Dino, Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0328, (850)413-5014

### THE FULL TEXT OF THE PROPOSED RULES IS:

4-149.003 Rate Filing Procedures.

(1) through (2) No change.

(3)(a) Filings shall be mailed to: Bureau of Life and Health Forms & Rates, Division of Insurer Services, Department of Insurance, Post Office Box 8040, Tallahassee, FL 32301-8040 or submitted electronically to <https://iportal.fldoi.com>. All filings sent to the Department by Federal Express or any other form of special delivery shall be delivered to: Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance, 1st Floor, Larson Building, 200 East Gaines Street, Tallahassee, FL 32399-0328.

(b) Subsequent to July 1, 2003, all filings shall be submitted electronically to <https://iportal.fldoi.com> or through other electronic systems supported by the Department.

(4) through (7) No change.

Specific Authority 624.308(1), 627.410(6)(b),(e) FS. Law Implemented 119.07(1)(b), 627.410 FS. History--New 7-1-85, Formerly 4-58.03, 4-58.003, Amended 8-23-93, 4-18-94, 8-22-95, 4-4-02, \_\_\_\_\_

4-149.021 Form Filing Procedures.

(1) through (4) No change.

(5)(a) Complete filings shall be mailed to: Bureau of Life and Health Forms & Rates, Division of Insurer Services, Department of Insurance, Post Office Box 8040, Tallahassee, FL 32301-8040 or submitted electronically https://iportal.fldoi.com. All filings sent to the Department by Federal Express or any other form of special delivery shall be delivered to: Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance, 1st Floor, Larson Building, 200 East Gaines Street, Tallahassee, FL 32399-0328.

(b) Subsequent to July 1, 2003, all filings shall be submitted electronically to https://iportal.fldoi.com or through other electronic systems supported by the Department.

(6) through (7) No change.

Specific Authority 624.308 FS. Law Implemented 624.307, 625.121, 627.410, 627.476, 627.807 FS. History--New 10-29-91, Amended 8-23-93, 4-18-94, 8-22-95, 5-15-96, 4-4-02.

NAME OF PERSON ORIGINATING PROPOSED RULE: Frank Dino, Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Rich Roblet, Bureau Chief, Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 23, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 8, 2002

**DEPARTMENT OF INSURANCE**

RULE TITLE: Loss Ratio Standards and Refund or Credit of Premium  
RULE NO.: 4-156.011

PURPOSE, EFFECT AND SUMMARY: To implement mandatory electronic filing of rate and form filings.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: None.

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

SPECIFIC AUTHORITY: 624.308, 627.674(2) FS.

LAW IMPLEMENTED: 624.307(1), 627.410, 627.673, 627.674, 627.6745, 627.6746 FS.

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

TIME AND DATE: 9:00 a.m., January 29, 2003

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting the person listed below.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Frank Dino, Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0328, (850)413-5014

THE FULL TEXT OF THE PROPOSED RULE IS:

4-156.011 Loss Ratio Standards and Refund or Credit of Premium.

(1) No change.

(2) Refund or Credit Calculation.

(a)1. through 2. No change.

3.a. Filings shall be mailed to: Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance, Post Office Box 8040, Tallahassee, FL 32301-8040, or submitted electronically to https://iportal.fldoi.com.

b. All filings sent to the Department by Federal Express or any other form of special delivery shall be delivered to: Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance, First Floor, Larson Building, 200 East Gaines Street, Tallahassee, FL 32399-0328.

c. Subsequent to July 1, 2003, all filings shall be submitted electronically to https://iportal.fldoi.com or through other electronic systems supported by the Department.

(b) through (c) No change.

(3) through (4) No change.

Specific Authority 624.308, 627.674(2) FS. Law Implemented 624.307(1), 627.410, 627.673, 627.674, 627.6745, 627.6746 FS. History--New 1-1-92, Amended 7-14-96, 12-17-96, 7-26-99, 3-4-01.

NAME OF PERSON ORIGINATING PROPOSED RULE: Frank Dino, Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Rich Roblet, Bureau Chief, Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 23, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 8, 2002

**DEPARTMENT OF INSURANCE**

RULE TITLE: Filing, Approval of Subscriber Contract and Related Forms  
 RULE NO.: 4-191.051

PURPOSE, EFFECT AND SUMMARY: To implement mandatory electronic filing of rate and form filings.  
 SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: None.

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

SPECIFIC AUTHORITY: 641.36 FS.

LAW IMPLEMENTED: 641.21(1)(e), 641.3007(4)(b),(c), 641.31(2),(3) FS.

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

TIME AND DATE: 9:00 a.m., January 29, 2003

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Frank Dino, Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0328, phone (850)413-5014.

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 above.

THE FULL TEXT OF THE PROPOSED RULE IS:

4-191.051 Filing, Approval of Subscriber Contract and Related Forms.

(1) through (2) No change.

(3)(a) One copy of each form filing shall be submitted at the time of filing. HMOs in possession of a Certificate of Authority shall submit all contract filings to the Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance, Post Office Box 8040, Tallahassee, Florida 32301-8040, or submitted electronically to <https://iportal.fldoi.com>. All filings sent by Federal Express or any other form of special delivery shall be delivered to: Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance, 1st Floor, Larson Building, 200 East Gaines Street, Tallahassee, FL 32399-0328.

(b) Subsequent to July 1, 2003, all filings shall be submitted electronically to <https://iportal.fldoi.com> or through other electronic systems supported by the Department.

(4) through (5) No change.

Specific Authority 641.36 FS. Law Implemented 641.21(1)(e), 641.3007(4)(b),(c), 641.31(2),(3) FS. History—New 2-22-88, Amended 10-25-89, Formerly 4-31.051, Amended 5-28-92, 8-15-02, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Frank Dino, Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Rich Roblet, Bureau Chief, Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 23, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 8, 2002

**DEPARTMENT OF INSURANCE**

RULE TITLE: Filing, Approval of Subscriber Contract and Related Forms  
 RULE NO.: 4-203.042

PURPOSE, EFFECT AND SUMMARY: To implement mandatory electronic filing of rate and form filings.  
 SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: None.

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

SPECIFIC AUTHORITY: 636.067 FS.

LAW IMPLEMENTED: 636.016, 636.017, 636.018 FS.

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

TIME AND DATE: 9:00 a.m., January 29, 2003

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Frank Dino, Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0328, phone (850)413-5014.

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 above.

THE FULL TEXT OF THE PROPOSED RULE IS:

4-203.042 Filing, Approval of Subscriber Contract and Related Forms.

(1) through (3) No change.

(4) Subsequent to July 1, 2003, all filings shall be submitted electronically to <https://iportal.fldoi.com> or through other electronic systems supported by the Department.

Specific Authority 636.067 FS. Law Implemented 636.016, 636.017, 636.018 FS. History--New 11-15-94, Amended 9-23-02, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Frank Dino, Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance  
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Rich Roblet, Bureau Chief, Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance  
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 23, 2002  
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 8, 2002

**DEPARTMENT OF REVENUE**

**Sales and Use Tax**

RULE TITLES:	RULE NOS.:
Admissions	12A-1.005
Aircraft, Boats, Mobile Homes, and Motor Vehicles	12A-1.007
Refunds and Credits for Sales Tax Erroneously Paid	12A-1.014
Equipment Used to Deploy Internet Related Broadband Technologies in a Florida Network Access Point; Refund Procedures	12A-1.0141
Promotional Materials Exported from this State	12A-1.034
Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property	12A-1.051
Mail Order Sales	12A-1.103

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

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

- Rule 12A-1.007, F.A.C., Aircraft, Boats, Mobile Homes, and Motor Vehicles
- Rule 12A-1.014, F.A.C., Refunds and Credits for Sales Tax Erroneously Paid
- Rule 12A-1.0141, F.A.C., Equipment Used to Deploy Internet Related Broadband

Technologies in a Florida Network Access Point; Refund Procedures

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

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

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

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

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

SUMMARY: The proposed amendments to Rule 12A-1.005, F.A.C.: (1) provide guidelines for when tax is due on the purchase of taxable components of a vacation package at the time of sale; (2) provide guidelines for when no additional tax is due on components of a vacation package sold by a travel agent; (3) provide guidelines for when travel agents who itemize taxable components of vacation packages are required to register as a dealer and collect sales tax from their customers on the sale of the itemized components; and (4) clarify guidelines for when the seller of components of a vacation package and the purchasing travel agent are members of the same controlled group of corporations for federal income tax purposes.

The proposed amendments to Rule 12A-1.007, F.A.C.: (1) provide that form DR-26S, Application for Refund-Sales and Use Tax, must be filed with the Department by the vehicle manufacturer to obtain a refund of tax pursuant to s. 681.104, F.S.; (2) provide that form DR-26S must meet the requirements of s. 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C.; (3) provide that the documentation listed in form DR-26S is required to be submitted to the Department to obtain such refund of tax; and (4) provide when form DR-26S must be filed with the Department.

The proposed amendments to Rule 12A-1.014, F.A.C.: (1) provide that dealers who paid sales and use tax to the Department must file form DR-26S to obtain a refund of such tax; (2) provide that form DR-26S must meet the requirements

of s. 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C.; and (3) provide when form DR-26S must be filed with the Department.

The proposed amendments to Rule 12A-1.0141, F.A.C.: (1) provide that form DR-26S is required to be filed with the Department by persons who paid tax on equipment used to deploy Internet related broadband technologies in a Florida network access point to obtain a refund of such tax from the Department; (2) provide that form DR-26S must meet the requirements of s. 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C.; and (3) provide when form DR-26S must be filed with the Department.

The proposed amendments to Rule 12A-1.034, F.A.C.: (1) provide that form DR-26S is required to be filed with the Department by persons who paid tax on promotional materials exported from Florida; (2) provide that form DR-26S must meet the requirements of s. 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C.; and (3) provide when form DR-26S must be filed with the Department.

The proposed amendments to Rule 12A-1.051, F.A.C. remove the definition of the term "trade fixtures," consistent with the removal of this definition from s. 212.06(14)(b), F.S., as amended by s. 13, Chapter 2002-218, L.O.F.

The proposed amendments to Rule 12A-1.103, F.A.C.: (1) provide that every dealer, as defined in s. 212.06(2)(c), F.S., who engages in the business of making mail order sales and who meets the requirements of s. 212.0596(2), F.S., is required to collect sales tax; (2) remove provisions redundant of the provisions of s. 212.0596(2), F.S.; (3) revise the definition of the terms "mail order sale" and "dealer" consistent with the provisions of s. 212.0596, F.S.; (4) clarify examples of mail-order sales and remove unnecessary examples; (5) provide that procedures to obtain a refund of tax paid on mail order sales when a final adjudication has been issued are provided in Rule 12A-1.014, F.A.C.; (6) define the term "final adjudication" for purposes of the rule; and (7) provide a technical cross reference to Rule 12A-15.003, F.A.C.

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

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

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

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

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

TIME AND DATE: 10:00 a.m., January 30, 2003

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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS:** Janet L. Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407, or 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 FULL TEXT OF THE PROPOSED RULES IS:

12A-1.005 Admissions.

(1) through (5) No change.

(6) SALES OF VACATION PACKAGES.

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

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

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

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

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

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

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

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

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

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

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

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

- (1) through (23) No change.
- (24) Lemon Law.

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

1. No change.

2.a. When the manufacturer repurchases the motor vehicle, the Department of Revenue shall refund to the manufacturer any Florida sales tax that the manufacturer refunded to the consumer, lienholder, or lessor under the

provisions of s. 681.104, F.S. To receive the refund, an Application for Refund-Sales and Use Tax (Form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.) must be filed by the manufacturer within 3 years after the date the tax was paid in accordance with the timing provisions of s. 215.26(2), F.S. The manufacturer must also submit, with its application for refund, the following documentation: 1) a copy of the written agreement signed by the consumer, lienholder, or lessor under which the manufacturer refunded the Florida sales tax to the consumer, lienholder, or lessor; 2) a copy of the original sales invoice made out by the seller which affirmatively demonstrates payment of Florida sales tax on the purchase of the motor vehicle for which the refund is being sought; and 3) written documentation that the manufacturer refunded the Florida sales tax to the consumer, lienholder, or lessor. An application for refund shall not be considered complete pursuant to s. 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C., and a refund shall not be approved before the manufacturer provides the required such documentation listed in form DR-26S regarding the reimbursement of tax previously paid on a vehicle purchased in Florida by a motor vehicle manufacturer when the manufacturer agrees to replace or repurchase the vehicle.

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

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

~~d.b-~~ No change.

(b) No change.

(25) through (29) No change.

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

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

(1) through (4) No change.

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

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

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

(b) through (6) No change.

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

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

(1) through (2) No change.

(3) To obtain a refund of tax imposed and paid pursuant to Chapter 212, F.S., on eligible equipment, an Application for Refund-Sales and Use Tax (form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.) must be filed with the Department within 6 months after the eligible property is purchased. An application for refund ~~Application for Refund~~ shall not be considered complete pursuant to s. 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C., and a refund shall not be approved until the applicant provides the following information and documentation to the Department and certifies that the provided information and documentation are true and correct:

(a) through (d) No change.

(4) through (5) No change.

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

12A-1.034 Promotional Materials Exported from this State.

(1) through (5) No change.

(6) To receive a refund of tax paid to the Department for promotional materials, the dealer must file an Application for Refund-Sales and Use Tax (form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.) within 3 years after the date the tax was paid in accordance with the Department timing provisions of s. 215.26(2), F.S. Form DR-26S must meet the requirements of ~~However, an application for refund shall not be considered complete pursuant to s. 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C.,~~ and a refund shall not be approved, before the date the promotional materials are exported from this state.

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

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

(a) through (b) No change.

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

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

(1) No change.

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

(a) through (b) No change.

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

2. through 3. No change.

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

~~a. Trade fixtures.~~

~~a.b. Titled property.~~

~~b.e. Machinery or equipment.~~

(d) through (i) No change.

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

(3) through (16) No change.

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

(a) through (gg) No change.

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

(ii) through (19) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(4),(7),(16),(19),(21), 212.06(1),(14),(15)(a), 212.07(1),(8), 212.08(6), 212.14(5), 212.183 FS. History—Revised 10-7-68, 1-7-70, 6-16-72, Amended 2-3-80, 3-27-80, 6-3-80, 8-26-81,11-15-82, 6-11-85, Formerly 12A-1.51, Amended 1-2-89, 8-10-92, 7-27-99, 3-30-00, 10-2-01(18), 10-2-01(5),(8),(9),(13),\_\_\_\_\_.

12A-1.103 Mail Order Sales.

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

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

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

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

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

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

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

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

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

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

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

(2)(c) ~~A “mail order sale” is a sale of tangible personal property, ordered by mail,—computer assisted shopping, media assisted, media facilitated, or media solicited, or other means of communication (including, but not limited to direct mail advertising, unsolicited distribution of catalogues, television, radio or other electronic media, telephone, or magazine or newspaper advertising), to a purchaser who is in this state at the time the order is remitted, from a dealer who receives the order in another state of the United States, or in a commonwealth, territory, or other area under the jurisdiction of the United States, and transports the property or causes the property to be transported, whether or not by mail, from any jurisdiction of the United States, including this state, to a person in this state, including the person who ordered the property. For purposes of this definition, there is presumption that every person who is a resident of this state who remits an order was in this state when the order was remitted.~~

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

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

3. Example: A Florida resident, while vacationing in another state, orders tangible personal property from a seller in another state, to be sent to the purchaser's home in Florida.



Since the purchaser is a Florida resident, he or she is presumed to have been in Florida at the time the order was remitted. If this presumption is rebutted, this would not be a taxable "mail order sale."

(3) through (5) No change.

(6) Refund of taxes on mail order sales.

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

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

1. ~~A description of the tangible personal property purchased;~~
2. ~~The date on which the purchase was made;~~
3. ~~The purchase price of said item(s);~~
4. ~~The amount of Florida sales tax paid for said item(s);~~
5. ~~The name of the seller from which the purchase of the tangible personal property was made;~~
6. ~~The cite of the court decision or decisions upon which the claim for refund is based;~~
7. ~~A copy of the sales invoice made out by the seller of the tangible personal property; and~~

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

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

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

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

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Janet L. Young, Technical Assistance and Dispute Resolution, Department of Revenue, P .O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4727, or e-mail: youngj@dor.state.fl.us

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Charles B. Strausser, Revenue Program Administrator II, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443; telephone number (850)922-4746

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 20, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed amendments to Rule Chapter 12A-1, F.A.C., Sales and Use Tax, were noticed for a rule development workshop in the Florida Administrative Weekly on October 25, 2002 (Vol. 28, No. 43, pp. 4557-4562). A rule development workshop was held on November 20, 2002, in Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida. Participants appearing at the workshop did not provide comment regarding the proposed amendments; no written comments have been received by the Department. Changes were made by the Department to the proposed amendments to Rules 12A-1.007, 12A-1.014, and 12A-1.034, F.A.C., to remove the phrase "in accordance with the timing provisions of s. 215.26, F.S." and to consistently require that an application for refund must meet the requirements of s. 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C. These changes are included in the Notice of Proposed Rulemaking.

**DEPARTMENT OF REVENUE**

**Sales and Use Tax**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Sales and Use Tax	12A-1
RULE TITLES:	RULE NOS.:
Sales and Use Tax on Services; Sale for Resale	12A-1.0161
Tax Due at Time of Sale; Tax Returns and Regulations	12A-1.056

Waiver of Electronic Data Interchange Sales and Use Tax Return Filing Requirements	12A-1.0565
Registration	12A-1.060
Public Use Forms	12A-1.097

**PURPOSE AND EFFECT:** The purpose of the proposed amendments to Rule Chapter 12A-1, F.A.C., Sales and Use Tax, is to: (1) provide requirements for registering with the Department for purposes of sales and use tax and the methods made available to register with the Department; (2) remove unnecessary provisions regarding the reporting and paying of tax by electronic means that are provided in Rule Chapter 12-24, F.A.C.; (3) adopt, by reference, changes to forms used by the Department in the administration of sales and use tax; and (4) remove the unnecessary recitation of statutory provisions.

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

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

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

The purpose of the proposed amendments to Rule 12A-1.060, F.A.C. (Registration), is to: (1) reorganize the rule for easier reading of the guidelines for registration with the Department; (2) provide guidelines for persons required to register with the Department for purposes of sales and use tax and the methods

by which persons may register; (3) clarify guidelines for registration of each place of business for use as transient accommodations; (4) clarify provisions for exhibitors who are required to register for purposes of sales and use tax; and (5) consolidate the provisions for penalties imposed for failure or refusal to register into one subsection of the proposed rule.

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

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

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

**SPECIFIC AUTHORITY:** 212.17(6), 212.18(2), 213.06(1) FS.  
**LAW IMPLEMENTED:** 125.0104(3)(g), 125.0108(2)(a), 212.02(14),(21), 212.03(1),(2), 212.0305(3)(c), 212.031(3), 212.04(3),(4), 212.05, 212.0506(4),(11), 212.055, 212.0596, 212.06(1)(a),(2),(5), 212.0606, 212.07(1)(b), 212.08(5)(f),(g), (h),(n),(o),(7)(v),(15), 212.096, 212.11, 212.12(1)-(6), 212.14(2), 212.15(1), 212.16(1),(2), 212.17(1),(6), 212.18(2),(3), 212.20(4), 213.755, 215.26(2), 288.1258, 376.30, 403.718, 403.7185, 681.117 FS.

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

**TIME AND DATE:** 10:00 a.m., January 30, 2003

**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 1(800)955-8770 (Voice) and 1(800)955-8771 (TDD).

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS:** Janet L. Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407 or 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 FULL TEXT OF THE PROPOSED RULES IS:**

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

(1) through (7) No change.

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

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

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

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

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

~~required to be remitted by electronic funds transfer and the tax due date falls on a Saturday, a Sunday, or a legal holiday as defined in s. 655.89, F.S., or on a legal holiday of the jurisdiction in which the taxpayer's financial institution is located, the deposit by electronic funds transfer is required on or before the first banking day thereafter. For the purposes of these rules, "banking day" has the meaning prescribed in s. 655.89, F.S.~~

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

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

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.05(1)(b),(j), ~~212.054, 212.055, 212.059(7), 212.06(1)(a),(2)(k), 212.07(1)(b),(8), 212.08(7)(v)~~ FS. History—New 5-13-93, Amended 1-4-94, 10-17-94, 3-20-96, 4-2-00, 10-2-01.

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

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

(b) through (c) No change.

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

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

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

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

(2) No change.

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

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

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

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

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

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

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

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

~~considered prima facie correct, and the burden to show the contrary shall rest upon the person charged with the responsibility of filing the report.~~

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

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 125.0104(3)(g), 125.0108(2)(a), 212.03(2), 212.0305(3)(c), ~~(h)~~, 212.031(3), 212.04(3),(4), ~~(5)~~, 212.0506(4), ~~(11), (10), 212.054(4)~~, 212.055, 212.06(1)(a), 212.0606, 212.11, 212.12(1),(2),(3),(4),(5), 212.14(2), 212.15(1), ~~212.225, 213.29, 213.755, 376.70, 215.01, 376.11, 403.718, 403.7185, 681.117~~ FS. History--Revised 10-7-68, 6-16-72, Amended 10-21-75, 6-9-76, 11-8-76, 2-21-77, 4-2-78, 10-18-78, 12-23-80, 8-26-81, 9-24-81, 11-23-83, 5-28-85, Formerly 12A-1.56, Amended 3-12-86, 1-2-89, 12-19-89, 12-7-92, 10-20-93, 10-17-94, 3-20-96, 4-2-00, 6-19-01, \_\_\_\_\_.

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

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

12A-1.060 Registration.

(1) PERSONS REQUIRED TO REGISTER AS DEALERS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

h. Sales of taxable services.

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

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

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

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

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

2. A separate application must be filed to obtain a separate dealer’s certificate of registration for each place of business. Each application must be accompanied by a \$5 registration fee, except as provided in subparagraphs 4. or 5.

(d)3. For purposes of this rules, a “place of business” is a location where a dealer engages in an activity or activities described in this subsection ~~subparagraph 4.~~ A place of business includes the entire contiguous area in which the dealer carries on an activity or activities that require registration. A dealer that engages in more than one activity requiring registration within a contiguous area generally is required to obtain only one registration certificate for that location. The ~~Department~~ department will, however, treat areas within a single contiguous location as separate places of business and require a dealer to obtain separate registration certificates if the activities carried on in those areas are subject to taxation under

different provisions of Chapter 212, F.S., the activities are not functionally related, and the efficient administration of the taxes imposed by Chapter 212, F.S., is facilitated by multiple registrations. The ~~Department~~ department will permit a dealer to obtain separate registrations for activities carried on at a single contiguous location at the dealer’s request if the dealer keeps separate financial records for the activities and the activities are not functionally related. Under no circumstances will a dealer be subject to more than one penalty for failure or refusal to obtain a registration certificate for a single contiguous location, even if the dealer could be required or permitted to obtain separate registration certificates for multiple activities carried on at the location. The following examples illustrate the application of this rule in determining whether more than one place of business exists at a single contiguous location.

a. through g. renumbered 1. through 7. No change.

~~4. The Department is authorized to impose a \$100 registration fee for each place of business in lieu of the \$5 registration fee for the failure or refusal of any person to file an Application to Collect and/or Report Tax in Florida (form DR-1) prior to engaging in or conducting business in this state as hereinbefore provided in subparagraph 1. Persons who have failed or refused to register are those that the Department seeks to register as a result of information supplied by an informant under s. 213.30, F.S., or as a result of enforcement programs administered by the Department. In making the determination as to whether the \$100 registration fee shall be required in lieu of the \$5 registration fee, the Executive Director or the Executive Director’s designee in the responsible process shall consider and be guided by:~~

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

b. The applicant’s ability to demonstrate the exercise of ordinary care and prudence through facts and circumstances presented to the Department indicating that a diligent attempt to meet the registration requirements of the law was made. An applicant with limited business knowledge, limited education, or limited experience with Florida tax matters may establish a basis for the existence of reasonable cause when there is reasonable doubt as to whether or not the applicant is required to register;

~~e. Reliance upon the erroneous advice of a competent advisor that the applicant did not meet the State’s registration requirements. To establish a reasonable cause for noncompliance with the registration requirements, the applicant must demonstrate that advice was sought in a timely manner from the competent advisor, all necessary information was provided to the competent advisor, and that the applicant acted in good faith on the information received from the competent advisor;~~

~~d. The applicant's ability to demonstrate that he relied upon another person to comply with the State's registration requirements on his behalf;~~

~~e. Whether the applicant, his agent, or employee can demonstrate that he exercised ordinary care and prudence in meeting the registration requirements once he had actual or constructive knowledge of such requirements.~~

~~5. No registration fee is required to accompany any application to engage in or conduct business or to make mail order sales. Additionally, no registration fee is required to accompany any application for out of state dealers who have no business location in Florida.~~

(2) HOW TO REGISTER AS A DEALER.

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

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

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

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

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

(3) REGISTRATION OF TRANISENT ACCOMMODATIONS.

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

(b)1. Any person exercising a taxable privilege of engaging in the business of renting, leasing, letting, or granting licenses to others to use transient accommodations is required to register as a dealer and obtain a separate dealer's certificate of registration for each place of business where transient accommodations are provided. Owners of transient accommodations, as defined in Rule 12A 1.061, F.A.C., including owners of time shares whose time shares are not registered under the provisions of subparagraph 2. must file an Application to Collect and/or Report Tax in Florida (form DR-1) with the Department of Revenue for a separate dealer's certificate of registration for each property or time share period rented, leased, let, or in which a license to use has been granted to others, except as provided in paragraph (c).

2. The agent, representative, or management company for a time-share resort which rents, leases, lets, or grants licenses to others to use time-share periods under written agreement(s) with time-share period owners is presumed to be the dealer who is required to be registered register under the provisions of

~~subparagraph 1., above. The agent, representative, or management company may collectively register the all such time-share units under the provisions of paragraph (c), even if the agent, representative, or management company may not rent, lease, let, or grant licenses to use to the transient public for each and every time-share period at such resort.~~

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

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

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

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

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

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

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

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

~~(e)12-~~ To The agent, representative, or management company may collectively register transient accommodations properties described in subparagraph 1., above, that are located in a single county, the agent, representative, or management company holding a dealer's certificate of registration may file by filing an Application for Collective Registration for Rental of Living or Sleeping Accommodations (form DR-1C) for each county. A separate form DR-1C is required for each county.

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

~~4.5. In lieu of completing all required information on form Form DR-1C for each unregistered property or time-share unit, all the information required for each property or time-share unit may be submitted to the Department in a schedule attached to the completed "Agent's Sales Tax Registration Information" section of form Form DR-1C, containing the agent or management company's name, mailing address, federal identification number (if applicable), and sales tax registration number. The schedule must contain all the required information listed in subparagraph 2. or 3., as applicable, so that the processing of the information may be accomplished by the Division of Tax Processing.~~

~~5.6. A \$5 registration fee, except as provided in subparagraph (1)(a)2. of this rule, must accompany form DR-1C the application for each transient accommodation such property or time-share unit that which is not currently registered with the Department. A certificate of registration Sales and Use Tax Certificate of Registration (Form DR-11) will be issued to the property owner for each property that is not a time-share unit other than time share units and mailed to the agent's address. For time-share units, a certificate of registration will be issued and mailed to the agent or management company. See subsection 12A-1.061(16), F.A.C.~~

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

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

#### (4) REGISTRATION OF EXHIBITORS.

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

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

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

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

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

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

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

~~(b) Any exhibitor who displays tangible personal property or services at a convention or trade show is required to register as a dealer and collect and remit tax on sales of taxable property or services subject to Florida sales tax when:~~

~~1.4. The written An exhibitor is required to register as a dealer if the agreement authorizes an the exhibitor to make retail sales in this state of taxable tangible personal property or services;~~

~~2.5. The written An exhibitor is required to register as a dealer if the agreement authorizes an the exhibitor to make mail order sales, pursuant to s. 212.0596, F.S.; or~~

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

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

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

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

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

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

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

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

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

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

(5) PENALTIES FOR FAILURE OR REFUSAL TO REGISTER.

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

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

(b) The Department is authorized to impose a \$100 registration fee for each place of business for the failure or refusal of any person to register with the Department prior to engaging in or conducting business in this state as a dealer. Persons who have failed or refused to register are those that the Department seeks to register as a result of information supplied by an informant under s. 213.30, F.S., or as a result of enforcement programs administered by the Department. In making the determination whether the \$100 registration fee shall be imposed, the Executive Director or the Executive Director's designee in the responsible process shall consider and be guided by:

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

2. The applicant's ability to demonstrate the exercise of ordinary care and prudence through presenting to the Department facts and circumstances indicating that a diligent attempt to meet the registration requirements of the law was made. An applicant with limited business knowledge, limited education, or limited experience with Florida tax matters may establish a basis for the existence of reasonable cause when there is reasonable doubt whether the applicant is required to register;

3. Reliance upon the erroneous advice of a competent advisor that the applicant did not meet the registration requirements. To establish a reasonable cause for noncompliance with the registration requirements, the applicant must demonstrate that advice was sought in a timely manner from the competent advisor, that all necessary information was provided to the competent advisor, and that the applicant acted in good faith on the information received from the competent advisor;

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

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

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.03(1),(2), 212.04(4), 212.0596(1),(2), 212.06(2), 212.12(2),(5),(6), 212.16(1),(2), 212.18(3) FS. History—Revised 10-7-68, 1-7-70, 6-16-72, Amended 3-21-77, 5-10-77, 10-18-78, Formerly 12A-1.60, Amended 6-10-87, 1-2-89, 11-12-90, 3-17-94, 1-2-95, 3-20-96, 11-30-97, 4-2-00, 6-19-01, 10-2-01(1), 10-2-01(1),\_\_\_\_\_.



12A-1.097 Public Use Forms.

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

(a) through (b) No change.

Form Number	Title	Effective Date
(2) DR-1	Application to Collect and/or Report Tax in Florida (R. <del>01/03</del> <u>08/04</u> )	<u>08/02</u>
(3)	No change.	
(4)(a) DR-5	Application for Consumer's Certificate of Exemption (R. <del>08/02</del> <u>10/04</u> )	<u>10/04</u>
(b) DR-5N	Information and Instructions for Completing Application for Consumer's Certificate of Exemption (R. <del>08/02</del> <u>10/04</u> )	<u>10/04</u>
(5)(a) DR-7	Consolidated Sales and Use Tax Return (R. <del>01/03</del> <u>04/02</u> )	<u>08/02</u>
(b) DR-7N	Instructions for Consolidated Sales and Use Tax Return (R. <del>01/03</del> <u>04/02</u> )	<u>08/02</u>
(6)(a) DR-15	Sales and Use Tax Return (R. <del>01/03</del> <u>04/02</u> )	<u>08/02</u>
(b) DR-15CS	Sales and Use Tax Return (R. <del>01/03</del> <u>04/02</u> )	<u>08/02</u>
(c) DR-15CSN	DR-15 Sales and Use Tax Returns Instructions <del>2003 2002</del> (R. <del>01/03</del> <u>04/02</u> )	<u>08/02</u>
(d) through (g)	No change.	
(h) DR-15N	Instructions for <del>2003 2002</del> DR-15 Sales and Use Tax Returns (R. <del>01/03</del> <u>04/02</u> )	<u>08/02</u>
(i) DR-15SA	Sales and Use Tax Return [Semi-Annual] (R. <del>01/03</del> <u>06/04</u> )	<u>08/02</u>
(j) DR-15SAN	Annual and Semiannual Sales and Use Tax Return Instructions (R. <del>01/03</del> <u>04/02</u> )	<u>08/02</u>
(k) through (n)	No change.	
(7) through (9)	No change.	
(10) DR-38	Tax Collector's Report-6% Sales Tax and/or Surtax (R. <del>06/02</del> <u>04/99</u> )	<u>08/02</u>
(11) through (20)	No change.	

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

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Janet L. Young, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4727, e-mail: youngj@dor.state.fl.us

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Charles B. Strausser, Revenue Program Administrator II, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443; telephone number (850)922-4746

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 20, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed amendments to Rule Chapter 12A-1, F.A.C., Sales and Use Tax, were noticed for a rule development workshop in the Florida Administrative Weekly on October 25, 2002 (Vol. 28, No. 43, pp. 4557-4562). A rule development workshop was held on November 20, 2002, in Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida. No one appeared to provide comment regarding these proposed rule changes. In response to written comments received by the Department, proposed provisions of paragraph (b) of subsection (4) of Rule 12A-1.060, F.A.C., have been revised to limit the provisions in that rule to the registration requirements of exhibitors at a trade show or convention. The Department has also made technical changes. The changes are included in the Notice of Proposed Rulemaking.

**DEPARTMENT OF REVENUE**

**Sales and Use Tax**

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

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

The purpose of the proposed amendments to Rule 12A-12.004, F.A.C. (Reporting and Remitting Fees), is to: (1) clarify when payments and returns are due to the Department; (2) provide that the penalties imposed under s. 212.12(2), F.S., apply to solid waste fees for purposes of late payments and the filing of returns; and (3) remove the unnecessary recitation of statutory provisions regarding the collection allowance and the computation of estimated tax.

SUMMARY: The proposed amendments to Rule 12A-12.003, F.A.C. (Registration), provide the requirements and the methods on how to register with the Department for purposes of the solid waste fees.

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

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

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

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

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

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

TIME AND DATE: 10:00 a.m., January 30, 2003

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 RULES IS: Janet L. Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443,

(850)922-9407, e-mail: youngj@dor.state.fl.us (The proposed rules are available on the department's web site at [www.myflorida.com/dor/rules](http://www.myflorida.com/dor/rules))

THE FULL TEXT OF THE PROPOSED RULES IS:

#### 12A-12.003 Registration.

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

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

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

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

(2) No change.

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

#### 12A-12.004 Reporting and Remitting Fees.

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

(1)(2)(a) A Solid Waste and Surcharge Return, (form DR-15SW, incorporated by reference in Rule 12A-16.008, F.A.C.), reporting new tires and lead-acid batteries sold at retail shall be filed with the Department. Except as provided in Rule Chapter 12-24, F.A.C., the The payment and the return must be delivered to either reach the office of the Department of Revenue or be postmarked on or before the 20th day of the month following the date of sale to avoid penalty and interest for late filing, as provided in Rule 12A 1.056(1), F.A.C. If the 20th day falls on Saturday, Sunday, or a legal holiday, payments accompanied by returns will be accepted as timely if postmarked or delivered to the Department on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of this rule, a legal holiday means a

holiday that is observed by federal or state agencies as a legal holiday as this term is defined in Chapter 683, F.S., and s. 7503 of the Internal Revenue Code of 1986, as amended. A "legal holiday" pursuant to s. 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a Statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

(b) When quarterly, semi-annual, or annual reporting is authorized by the Department pursuant to s. 212.11(1)(c), F.S., the fee is due the first day of the month following the authorized reporting period and becomes delinquent on the 21st day of that month. When a dealer is required to file the new tire fee and the lead-acid battery fee under a single account number on the same return, the dealer may not exceed the limitations provided in s. 212.11(1)(c), F.S., to be eligible to file on a quarterly, semi-annual, or annual basis. The Solid Waste and Surcharge Return, form DR-15SW, is incorporated by reference in Rule 12A-16.008, F.A.C. Copies of this form are available, without cost, by one or more of the following methods: 1) writing the Florida Department of Revenue, Forms Distribution Center, 168 Blountstown Highway, Tallahassee, Florida 32304; or, 2) faxing the Forms Distribution Center at (850)922-2208; or, 3) using a fax machine telephone handset to call the Department's automated Fax on Demand system at (850)922-3676; or, 4) visiting any local Department of Revenue Service Center to personally obtain a copy; or, 5) calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or, 6) downloading selected forms from the Department's Internet site at the address show inside the parentheses (<http://www.myflorida.com/dor/>). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.

(c) Electronic filing of payments and returns for reporting fees must be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C., when: When a dealer is required to file the new tire fee and the lead acid battery fee under a single account number on the same return, the dealer must not exceed the limitations, as provided in s. 212.11(1)(c), F.S. to be eligible to file on a quarterly or semiannual basis.

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

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

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

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

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

(2)(5) The failure of any dealer to secure a tax return for reporting new tire and lead-acid battery fees does not relieve the dealer from the requirement to file a return or to remit fees

due to the Department. The Department As stated in subsection 12A-1.056(8), F.A.C., with reference to taxes, the department is not authorized to extend the time for any dealer to file make any return or to pay any fee due the fees; and the consequences described in that subsection are applicable to the fees.

(3)(6) No change.

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

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Janet L. Young, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4727, e-mail: youngj@dor.state.fl.us

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Charles B. Strausser, Revenue Program Administrator II, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4746

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 20, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed amendments to Rule Chapter 12A-12, F.A.C., Solid Waste Fees, were noticed for a rule development workshop in the Florida Administrative Weekly on October 25, 2002 (Vol. 28, No. 43, pp. 4569-4571). A rule development workshop was held on November 20, 2002, in Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida. No one appeared to provide comment regarding these proposed rule changes; the Department has received no written comments. Technical changes have been made by the Department and are included in the Notice of Proposed Rulemaking.

**DEPARTMENT OF REVENUE**

**Sales and Use Tax**

RULE TITLES:	RULE NOS.:
Scope of Rules	12A-13.001
Collection and Remittance of Fee	12A-13.002
Distribution of Fees Remitted to the Department of Revenue	12A-13.003

PURPOSE AND EFFECT: The purpose of the proposed changes to Rule Chapter 12A-13, F.A.C. (Fee on the Sale or Lease of Motor Vehicles), is to: (1) provide guidelines for the remittance of the motor vehicle warranty fee for new motor vehicles titled and registered outside this state, as required by s. 54, Chapter 2002-218, L.O.F.; (2) remove language redundant

of statutory provisions regarding the distribution of funds received from the fee; and (3) incorporate, by reference, changes to form DR-35, Motor Vehicle Warranty Remittance Fee.

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

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

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

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

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

SPECIFIC AUTHORITY: 213.06(1) FS.

LAW IMPLEMENTED: 681.117 FS.

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

TIME AND DATE: 10:00 a.m., January 30, 2003

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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Gary Gray, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4729, or e-mail (grayg@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 FULL TEXT OF THE PROPOSED RULES IS:

12A-13.001 Scope of Rules.

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

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

12A-13.002 Collection and Remittance of Fee.

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

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

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

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

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

(4)(2) Each county tax collector shall file a Motor Vehicle Warranty Remittance Fee (DR 35), dated January 1989, which is hereby incorporated in this rule and made part of the rule by reference, showing the amount of such fees received, and shall remit such fees to the Department of Revenue at or within the time or times prescribed in Section 219.07, Florida Statutes. The form entitled Motor Vehicle Warranty Remittance Fee

Report (form DR-35) is available, without cost, by one or more of the following methods: 1) writing the Florida Department of Revenue, Forms Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304; or, 2) faxing the Forms Distribution Center at (850)922-2208; or, 3) using a fax machine telephone handset to call the Department's automated Fax on Demand system at (850)922-3676; or, 4) visiting any local Department of Revenue Service Center to personally obtain a copy; or, 5) calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or, 6) downloading selected forms from the Department's Internet site at the address 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.

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

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

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

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Gary Gray, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4729, e-mail (grayg@dor.state.fl.us)

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Charles B. Strausser, Revenue Program Administrator II, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443; telephone number (850)922-4746

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 20, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed amendments to Rule Chapter 12A-13, F.A.C., Fee on the Sale or Lease of Motor Vehicles, were noticed for a rule development workshop in the Florida Administrative Weekly on October 25, 2002 (Vol. 28, No. 43, pp. 4571-4572).

A rule development workshop was held on November 20, 2002, in Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida. No one appeared to provide comment regarding these proposed rule changes; the Department has received no written comments. Technical changes have been made by the Department and are included in the Notice of Proposed Rulemaking.

**DEPARTMENT OF REVENUE**

**Sales and Use Tax**

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

PURPOSE AND EFFECT: The purpose of the proposed changes to Rule Chapter 12A-15, F.A.C., Discretionary Sales Surtax, is to provide current guidelines regarding the imposition of discretionary sales surtaxes under Section 212.054, F.S., levied by a governing body of any county as authorized in Section 212.055, F.S., on admissions, sales and use of tangible personal property and services, leases, rentals, and licenses to use real property or transient accommodations, and other transactions subject to the surtaxes.

SUMMARY: The proposed substantial rewording of Rule 12A-15.003, F.A.C.: (1) changes the title to "Admissions; Tangible Personal Property; Services; Service Warranties; Real Property and Transient Accommodations; Use Tax," to reflect the changes to the proposed rule; (2) provides that guidelines for the imposition of the surtax on the sale, lease, rental, and use of any aircraft, boat, motor vehicle, or mobile home are provided in Rule 12A-15.0035, F.A.C., as proposed; (3) defines the term "surtax county"; (4) provides that charges for admissions are subject to the surtax imposed in the county where the event is held; (5) provides that dealers who sell taxable tangible personal property are required to collect surtax when the property is delivered to a location within a surtax county at that county's rate; (6) provides that dealers are required to collect surtax when a mail-order sale is placed through a dealer's location within a surtax county, the mail-order sale is received in another state, and the property is delivered to a location within a surtax county; (7) provides that dealers are required to collect surtax on taxable services when the delivery of the service, or the tangible personal property representing the service, is made to a location within a surtax county; (8) provides that any person located within a surtax county who receives consideration for issuance of a service warranty is required to collect surtax; (9) provides that dealers are required to collect surtax on sales of electricity or natural or

manufactured gas to any customer located within a surtax county; (9) provides that surtax is imposed on the lease, rental, or license to use real property or transient accommodations located within a surtax county; (10) provides that any person who is not required to be registered as a dealer and who owes Florida use tax is not required to pay surtax when paying the use tax due; (11) provides that no additional surtax is due when the applicable sales tax and surtax have been paid at the time of purchase and the item is later used in a surtax county imposing a rate of surtax greater than that paid at the time of purchase; and (12) provides that registered dealers are required to pay surtax when required to pay Florida use tax and the taxed property is used in a surtax county.

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

The proposed amendments to Rule 12A-15.004, F.A.C.: (1) change the title to "Specific Limitations"; (2) provide guidelines regarding the limitation for the sales amount above \$5,000 for any item of tangible personal property subject to the surtaxes; (3) provide when the surtax applies without limitation to sales of admissions, services, service warranties, prepaid calling arrangements, real property or transient accommodations; to parking, storage, or tie-down spaces at boat docks and marinas or for aircraft; and to any other

transaction; (4) provide when lease payments are subject to the limitation; (5) provide that the limitation applies when the sale or purchase is a single sale and it is a sale of items normally sold in bulk or items that comprise a working unit or part of a working unit; (6) define and describe a "single sale," "items normally sold in bulk," and "items that comprise a working unit"; (7) provide guidelines for when multiple items of tangible personal property will not be aggregated into a single sale for purposes of the limitation; and (8) provide illustrative examples for the application of the surtax limitation.

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

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

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

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

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

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

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

SPECIFIC AUTHORITY: 212.17(6), 212.18(2), 213.06(1) FS.  
LAW IMPLEMENTED: 212.02(2),(4),(15),(16),(19),(20), 212.05(1), 212.0506, 212.054, 212.055, 212.0596, 212.0598, 212.06(1),(2),(4),(6),(8),(9),(10), 212.07(8), 212.08(4)(a), (8),(9), 212.14(5), 212.18(3) FS.

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

TIME AND DATE: 10:00 a.m., January 30, 2003

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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Janet L. Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407, or 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 FULL TEXT OF THE PROPOSED RULES IS:

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

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

(1) SCOPE.

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

(b) Rule 12A-15.0035, F.A.C. (Aircraft, Boats, Motor Vehicles, and Mobile Homes), governs the imposition of surtax on the sale, lease, rental, and use of any aircraft or boat that is required to be registered, licensed, titled, or documented

in this state or by the United States Government and any motor vehicle or mobile home of a class or type that is required to be registered in this state.

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

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

(4) SALES OF TANGIBLE PERSONAL PROPERTY.

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

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

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

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

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

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

#### (5) MAIL-ORDER SALES.

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

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

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

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

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

#### (6) SERVICES.

(a) When a dealer sells a taxable service, and delivery of the service, or tangible personal property representing a taxable service, is made to a location within a surtax county, the dealer is required to collect surtax at the rate imposed in the county where the services are provided or where the tangible personal

property representing the services is delivered. If there is no reasonable evidence of delivery of a service, the sale of a service occurs in the county in which the purchaser accepts the invoice for services rendered.

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

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

3. Example: A dealer in County A (a county imposing a 1% surtax) sells armored car service to a bank in County B (a surtax county imposing a 1/2% surtax). The armored car service is provided to the bank's branches located in different counties and to the main bank. Under this example, the armored car service provider cannot reasonably allocate the service provided to each county. The main bank located in County B receives the invoice for services rendered. Therefore, the service transaction occurs within County B. The dealer is required to collect sales tax and surtax on the sales price of the services at the rate of 6 1/2% (6% state sales tax and 1/2% surtax).

#### (7) SERVICE WARRANTIES.

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

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

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



warranty is required to collect sales tax and surtax on the sales price of the service warranty at the rate of 6 1/2% (6% state sales tax and 1/2% surtax).

(8) ELECTRIC AND GAS UTILITIES.

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

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

(9) REAL PROPERTY AND TRANSIENT ACCOMMODATIONS.

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

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

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

(10) USE TAX.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) TITLE CERTIFICATE, LICENSE, OR REGISTRATION.

(a) No title certificate may be issued on any aircraft, boat, mobile home, motor vehicle, or other vehicle, or, if no title certificate is required by law, no license or registration may be

issued for any aircraft, boat, mobile home, motor vehicle, or other vehicle by any state agency unless there is filed with the application for title certificate or license or registration a receipt evidencing the payment of the applicable surtax issued by:

1. Any authorized aircraft, boat, mobile home, or motor vehicle dealer;
2. Any County Tax Collector;
3. Any licensed Private Tag Agency;
4. The Department of Highway Safety and Motor Vehicles; or
5. The Department of Revenue or its designated agents.

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

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

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

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

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

#### (4) AIRCRAFT AND BOATS.

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

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

2.a. A credit against any Florida use tax and surtax due on the use of an aircraft or boat is allowed to any purchaser who provides documentary evidence that a like tax has been lawfully imposed on the sale or use of the aircraft or boat and has been paid to another state, territory of the United States, or the District of Columbia. The credit allowed shall be the amount of legally imposed like tax paid to the other state,

territory of the United States, or the District of Columbia. When the applicable tax credit is equal to or greater than the amount of tax or surtax due on the use of the aircraft or boat in a surtax county, no additional surtax is due. When the tax is paid to another state, territory of the United States, or District of Columbia is greater than the Florida sales tax and surtax due, no refund is due from the State of Florida.

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

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

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

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

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

3. Example: A purchaser who resides in County A (a county imposing a 1/2% surtax) purchases a boat and uses the boat in County A. Nine months after the date of purchase, the purchaser moves the boat to County B (a county imposing a 1% surtax) for storage and to be used in County B. No

additional surtax is due, because the boat was used in County A for 6 months or longer before being imported for use in County B.

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

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

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

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

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

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

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

(d)1. Example: A mobile home dealer in County A (a county not imposing a surtax), sells a mobile home for \$12,599. The residence address of the purchaser on the title document is in County B (a county imposing a 1/2% surtax). The transaction occurs in County B. The selling dealer is required to collect sales tax and surtax at the rate of 6 1/2% (6% state tax and 1/2% surtax) on the first \$5000 of the sales price and sales tax at the rate of 6% on the amount of the sales price in excess of \$5000.

2. Example: A person purchases a motor vehicle in Alabama for \$7,500, and pays \$150 state sales tax and \$75 local sales tax for a total tax of \$225 to the State of Alabama. Within 6 months from the date of purchase, the purchaser imports the vehicle into Florida for use in County A (a county imposing a 1/2% surtax). The purchaser's residential address on the registration document is located in County A. The use transaction occurs in County A. The amount of tax due prior to deducting the like tax paid in Alabama is \$475 [(\$7,500 x .06) + (\$5,000 x .005)]. Even though the local tax paid in Alabama exceeds the surtax due in County A, the total amount of like tax paid in Alabama will be allowed as a credit against the Florida use tax and surtax due in County A. A credit of \$225 tax paid in Alabama will be allowed. The purchaser is required to pay \$250 in tax and surtax due [\$475 Florida tax and surtax due - \$225] to any County Tax Collector or licensed Private Tag Agent when registering the vehicle in this state.

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

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

12A-15.004 Specific Limitations Exemptions

(1) SCOPE. This rule is intended to provide guidelines regarding the limitation for the sales amount above \$5,000 provided for any item of tangible personal property subject to the discretionary sales surtax imposed under ss. 212.054 and 212.055, F.S. For the application of the limitation to the fabrication of items used in the performance of a real property contract, see Rule 12A-15.008, F.A.C. Except as provided in

~~this section, any transaction subject to the state sales and use tax imposed on sales, use, rentals, admissions, and other transactions by Chapter 212, F.S., is subject to the surtax, if the transaction occurs in a taxing county. A transaction that is not subject to state sales and use tax is not subject to the surtax.~~

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

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

~~(c)1.2.a. Example: A motor vehicle dealer in a county imposing the surtax sells a vehicle for \$12,000 to a purchaser whose and the purchaser's address on the registration or title document is in a county imposing the surtax. The first \$5,000 of the sales amount is subject to the surtax and the amount over \$5,000 (i.e., \$7,000) is not subject to the surtax.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) EXAMPLES.

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

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

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

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

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

~~(e) In the lease or rental of tangible personal property, each lease or rental payment made by a lessee or rentee, or contracted to be paid by a lessee or rentee represents one taxable transaction. Liability for the immediate payment of the tax on all the payments required under the lease or rental does not arise at the time of the execution of the lease or rental.~~

~~(d) Where a purchase order is issued by the purchaser to the selling dealer, or an agreement is made between the selling dealer and the purchaser which is reduced to writing, that provides for the purchase of a specific quantity of tangible personal property which, according to the terms and conditions set out in the purchase order or agreement, is to be delivered to the purchaser within a definite specified time, such transaction constitutes one sale for purposes of the \$5000 limitation. Delivery of the tangible personal property so ordered within the time specified in the purchase order or agreement will constitute one sale notwithstanding that due to the nature of the property it must be delivered in installments or that multiple deliveries may be necessary to consummate delivery to the purchaser. In the absence of a written purchase order or written agreement reflecting the above conditions, each individual delivery of tangible personal property is to be considered one sale. Each individual delivery of tangible personal property on purchase orders for indefinite quantities or open end purchase orders is considered to be one sale.~~

~~(e) Where a contractor fabricates an item of tangible personal property for his own consumption and use in the performance of contracts for the construction or improvement of real property the \$5000 limitation is applicable only to those~~

~~cases where the contract, or agreement which is reduced to writing, specifies the particular project on which the item of property is to be used.~~

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

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

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

~~(a)4.~~ Contractors or subcontractors purchasing tangible personal property from a dealer ~~in a taxing county~~ for use in a lump sum, cost plus, fixed fee, guaranteed price, or similar type any kind of contract, except one falling in paragraph (b) below, must pay the surtax to the selling dealer, when the property is delivered if delivery is made to a location within a county imposing the surtax. The surtax to be paid to the selling dealer is based on the rate imposed in the county where delivery of the tangible personal property is made. When the tangible personal property is delivered to a location within a county not imposing the surtax, no surtax is due.

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

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

~~(c)14.~~ Contractors and subcontractors are required to pay use tax on the fabricated cost of items of tangible personal property they manufacture, produce, compound, process, or fabricate for their own use in performing contracts. When the contractor or subcontractor owes use tax on the fabricated cost of items manufactured, produced, compounded, processed, or fabricated for use at a manufacturing plant site located within a surtax county, the contractor or subcontractor is required to pay surtax on such fabrication cost. If the contractor or subcontractor purchases tangible personal property for use or consumption in the performance of a real property contract from a dealer located within or without a taxing county, and

pays the applicable sales tax and surtax to the dealer, and further fabricates such property at a manufacturing plant site in a taxing county, such fabrication costs are subject to both sales tax and surtax. Labor Fabricated labor incurred at the job site where the item will be incorporated into a real property improvement or transportation from the plant where an item was fabricated to the job site is not subject to tax or surtax. For the purpose of this subsection "job site" means a temporary site where fabrication is performed for a specific job. The "job site" becomes a "manufacturing plant site" when fabrication is performed for any job other than the specific job for which the site was selected. See Rule 12A-1.043(4), F.A.C., for determining fabrication cost.

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

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

4. The \$5000 limitation is applicable to the fabricated cost when the written contract or agreement specifies the particular project for which the fabricated item of tangible personal property is to be used.

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

~~on a percent of contract price basis, surtax only needs to be accrued on \$5,000, because the fabricated tangible personal property is identified to the specific contract.~~

(2) RETAIL SALE PLUS INSTALLATION CONTRACTS.

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

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

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

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

~~(b) To receive the refund, the contractor responsible for the performance of the contract must file an Application for Refund-Sales and Use Tax from the State of Florida (form DR-26S), incorporated by reference in Rule 12-26.008, F.A.C.), containing a sworn statement, signed by the applicant or its representative, attesting to the validity of the application~~

~~for refund. Such application for refund shall be made no later than 15 months following the initial imposition of the surtax in the county in which the transaction subject to the initial imposition of the surtax occurred.~~

~~2. Applications for Refund from the State of Florida (DR 26) are available, without cost, by one or more of the following methods: 1) writing the Florida Department of Revenue, Forms Distribution Center, 168 Blountstown Highway, Tallahassee, Florida 32304; or, 2) faxing the Forms Distribution Center at (850)922-2208; or, 3) using a fax machine telephone handset to call the Department's automated Fax on Demand system at (850)922-3676; or, 4) visiting any local Department of Revenue Service Center to personally obtain a copy; or, 5) calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or, 6) downloading selected forms from the Department's Internet site at the address shown inside the parentheses (<http://www.myflorida.com/dor/>). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.~~

~~(c) The contractor must submit the information as provided in subparagraphs shown in 1. through 5. below, with the Application for Refund-Sales and Use Tax from the State of Florida (form DR-26S). Upon approval of a completed application, the Department of Revenue shall, within 30 days, certify to the county or counties information necessary for issuance of a refund directly to the applicant of said taxes. Counties are authorized to issue refunds for this purpose and shall set aside from the proceeds of the surtax a sum sufficient to pay any refund lawfully due.~~

~~1. through 5. No change.~~

~~(d) No change.~~

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

~~12A-15.009 Occasional and Isolated Sales.~~

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

~~12A-15.013 Interstate and Foreign Commerce.~~

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

~~12A-15.014 Transition Rule.~~

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

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

~~(a)1. Dealers in motor vehicles, mobile homes, boats, and aircraft who issue sales invoices to their customers, dated before the effective date of any such surtax, shall charge the~~

applicable 6% tax rate, even though delivery is not made until after the effective date of the surtax. To qualify for the 6% tax rate, the provisions established in subsection (1) must be met.

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

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

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

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

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

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

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

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

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

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

12A-15.015 Public Use Forms.

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Janet L. Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407, or e-mail: youngj@dor.state.fl.us

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Charles B. Strausser, Revenue Program Administrator II, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443; telephone number (850)922-4746

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 20, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed amendments to Rule Chapter 12A-15, F.A.C., Discretionary Sales Surtax, were noticed for a rule development workshop in the Florida Administrative Weekly on October 25, 2002 (Vol. 28, No. 43, pp. 4572-4584).

A rule development workshop was held on November 20, 2002, in Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida. No one appeared to provide comment regarding these proposed rule changes.

Written comments, dated November 18, 2002, from the Marine Industries Association of Florida, Inc., were received by the Department regarding the application of the surtax on a boat used within a county and the application of the \$5,000 limitation to the sale of electric power or energy. In response, the proposed amendments to subparagraph (4)(b)1. and sub-subparagraph (4)(b)3.b. of Rule 12A-15.0035, F.A.C., have been revised and are included in the Notice of Proposed Rulemaking.

**DEPARTMENT OF REVENUE**

**Sales and Use Tax**

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

PURPOSE AND EFFECT: The purpose of the proposed changes to Rule Chapter 12A-16, F.A.C., Rental Car Surcharge, is to: (1) provide current guidelines on how to register with the Department for purposes of the rental car surcharge; (2) clarify when payments and returns are due to the



Department; (3) provide that the penalties imposed under s. 212.12(2), F.S., apply to the rental car surcharge for purposes of late payments and the filing of returns; and (4) remove unnecessary provisions from the rule chapter.

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

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

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

The proposed amendments to Rule 12A-16.008, F.A.C. (Public Use Forms): (1) adopt, by reference, changes to form DR-15SW, Solid Waste and Surcharge Return; and (2) provide necessary technical changes.

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

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

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

LAW IMPLEMENTED: 212.0606, 212.07, 212.08(9), 212.11, 212.12(2),(3),(4), 212.13, 212.18(3), 213.235, 213.755, 376.70, 403.717, 403.718, 403.7185 FS.

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

TIME AND DATE: 10:00 a.m., January 30, 2003

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 RULES IS: Janet L. Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-9407, e-mail: youngj@dor.state.fl.us (The Department's Proposed rules are available on the Department's web site at [www.myflorida.com/dor/rules](http://www.myflorida.com/dor/rules))

THE FULL TEXT OF THE PROPOSED RULES IS:

#### 12A-16.004 Registration.

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

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

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

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

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

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

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

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

#### 12A-16.006 Surcharge Returns and Filing Requirements Regulations

(1)(a) Except as provided in Rule Chapter 12-24, F.A.C., the surcharge for each month shall be due to the Department of Revenue on the first day of the month following the date the lease or rental payments are to be made by the lessee or renter, under the terms of the lease or rental agreement, and shall be delinquent on the twenty first of each month. The payment and return must be delivered to either reach the office of the Department of Revenue or be

postmarked on or before the 20th day of the month following the date the lease or rental payments are to be made by the lessee or renter, under the terms of the lease or rental agreement, to avoid penalty and interest for late filing. ~~If When~~ the 20<sup>th</sup> day falls on Saturday, Sunday, or a legal holiday, payments accompanied by returns will be accepted as timely if postmarked or delivered to the Department on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For this purpose, a legal holiday means a holiday which is observed by federal or state agencies as a legal holiday as this term is defined in Ch. 683, F.S., and ~~s. Sec.~~ 7503 of the Internal Revenue Code of 1986, as amended. A "legal holiday" pursuant to ~~s. Section~~ 7503 of the 1986 Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a ~~statewide~~ ~~Statewide~~ legal holiday at a location outside the District of Columbia but within an internal revenue district.

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

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

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

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

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

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

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

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

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

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

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

12A-16.007 Interstate and Foreign Commerce.

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

12A-16.008 Public Use Forms.

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

(b) Copies of these forms are available, without cost, by one or more of the following methods: 1) writing the Florida Department of Revenue, ~~Forms~~ Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304; or, 2) faxing the ~~Forms~~ Distribution Center at (850)922-2208; or, 3) using a fax machine telephone handset to call the Department's automated Fax on Demand system at (850)922-3676; or, 4) visiting any local Department of Revenue Service Center to personally obtain a copy; or, 5) calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or, 6) downloading selected forms from the Department's Internet site at the address show inside the parentheses (~~http://www.myflorida.com/dor/~~). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.

Form Number	Title	Effective Date
<del>(2)</del> (4) DR-15SW	Solid Waste and Surcharge Return	
	(R. 04/02 <del>r. 05/99</del> )	____ 06/01
<del>(3)</del> (2) No change.		

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Janet L. Young, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4727, e-mail: youngj@dor.state.fl.us

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Charles B. Strausser, Revenue Program Administrator II, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4746

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 20, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed amendments to Rule Chapter 12A-16, F.A.C., Rental Car Surcharge, were noticed for a rule development workshop in the Florida Administrative Weekly on October 25, 2002 (Vol. 28, No. 43, pp. 4584-4585). A rule development workshop was held on November 20, 2002, in Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida. No one appeared to provide comment regarding these proposed rule changes.

Written comments, dated November 18, 2002, were received by the Department from the Marine Industries Association of Florida, Inc., regarding the proposed repeal of Rule 12A-16.007, F.A.C., Interstate and Foreign Commerce. In response to these comments, the Department has made no change to this proposed repeal. Section 212.08(9), F.S., provides a partial exemption from taxes, fees, and surcharges imposed and administered under Chapter 212, F.S., for motor

vehicles used in interstate or foreign commerce. Guidelines for the partial exemption are provided in Rule 12A-1.064, F.A.C., as amended; and the provisions of Rule 12A-16.007, F.A.C., are unnecessary. Under the provisions of s. 120.74, F.S., the Department is required to repeal any unnecessary rule.

**DEPARTMENT OF REVENUE**

**Miscellaneous Tax**

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

**PURPOSE AND EFFECT:** The purpose of the proposed changes to Rule Chapter 12B-11, F.A.C., Tax on Gross Receipts on Dry-Cleaning, is to: (1) provide current guidelines and requirements for registering with the Department for purposes of the tax on gross receipts on dry-cleaning; (2) provide current guidelines for the reporting and payment of the tax; (4) remove the unnecessary recitation of statutory provisions; and (5) remove forms that are no longer used by the Department in the administration of the tax on gross receipts on dry-cleaning.

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

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

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

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

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

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

**LAW IMPLEMENTED:** 213.755, 376.70 FS.

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

**TIME AND DATE:** 10:00 a.m., January 30, 2003

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

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS:** Alan R. Fulton, Senior Tax Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)488-8026, or e-mail (fultona@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).

**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 FULL TEXT OF THE PROPOSED RULES IS:**

12B-11.005 Registration.

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

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

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

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

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

~~(3)(2) The Executive Director or the Executive Director's designee, upon receipt of such application, will grant the applicant a Certificate of Registration (Form DR-11), incorporated by reference in Rule 12A-1.097, F.A.C. Engaging in business as a dry-cleaning facility without first obtaining a certificate of registration Certificate of Registration or after such certificate has been cancelled by the Executive Director or the Executive Director's designee is prohibited. The failure or refusal of any person to register is a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., or subject to injunctive proceeding as provided by law.~~

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

12B-11.006 Returns and Filing Requirements Regulations.

(1) Tax due on transactions:

(a) Businesses which maintain tax and accounting records on the basis of cash receipts may report this tax when payment is received. The tax is due on the first day of the month following the month that the consideration for the service is paid, if the accounting records are maintained on the basis of cash receipts.

(b) Businesses which maintain tax and accounting records on the accrual basis must report this tax in the month the receivable is recorded. The tax is due on the first day of the month following the month that the receivable for the service is recorded, if the accounting records are maintained on the accrual basis.

~~(c)(2) The tax should be reported on the Solid Waste and Surcharge Return (form ~~Form~~ DR-15SW), incorporated by reference in Rule 12A-16.008, F.A.C.~~

~~(2)(3)(a) Except as provided in Rule Chapter 12-24, F.A.C., the payment and the Solid Waste and Surcharge Return (Form DR-15SW); must be delivered to either reach the office of the Department or be postmarked on or before the 20th day of the month following the month in which the consideration is received, if the accounting records are maintained on the basis of cash receipts, to avoid penalty and interest for late filing as follows; whether or not any taxes are due, by all persons required to file the returns.~~

1. On or before the 20th day of the month following the month in which the consideration is received, if the accounting records are maintained on the basis of cash receipts; or

~~2.(b) On The payment and the Solid Waste and Surcharge Return (Form DR-15SW) must either reach the office of the Department or be postmarked on or before the 20th day of the month following the month in which the account receivable is posted, if the accounting records are maintained on the accrual basis, to avoid penalty and interest for late filing, whether or not any taxes are due, by all persons required to file the return.~~

3.(4)(a) If the 20th day falls on a Saturday, Sunday, or a legal holiday, payments accompanied by returns will shall be accepted as timely if postmarked or delivered to the Department department on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

~~(b) For the purpose of this rule section, a legal holiday means shall mean a holiday that which is observed by federal or state agencies as a legal holiday, as this term is defined in Chapter 683, F.S., and s. 7503, Internal Revenue Code, of 1986, as amended and in effect on 1/1/95, which is incorporated by reference in this rule. A "legal holiday" pursuant to s. 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.~~

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

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

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

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

~~(3)(5) The failure of any dealer to secure a tax return for reporting tax due does not relieve the dealer from the requirement to file a return or remit tax due to the Department. The Department is not authorized to extend the time for any dealer to file any return or pay any tax due. As stated in Rule 12A-1.056(12), F.A.C., with reference to taxes, the Department is not authorized to extend the time to make any returns or pay any fees; and the consequences for late filing described in Rule 12A-1.056, F.A.C., are applicable to this tax.~~

(4) Persons who are required to make a return or to pay tax on gross receipts on dry-cleaning imposed under s. 376.70, F.S., and administered under the provisions of Chapter 212, F.S., and fail to do so will be subject to penalties, as provided in s. 212.12(2), F.S.

~~(6) Where payment by electronic funds transfer is required, the tax will be remitted as provided by Rule Chapter 12-24, F.A.C.~~

~~(7) A collection allowance for timely remitting the tax due, provided in s. 212.12, F.S., does not apply to the gross receipts tax.~~

Specific Authority 212.17(6), 212.18(2), 213.06(1), 376.70(6)(5)(b) FS. Law Implemented 213.755, 376.70 FS. History--New 2-19-95, Amended 6-19-96, \_\_\_\_\_.

12B-11.009 Public Use Form.

Specific Authority 212.17(6), 212.18(2), 213.06(1), 376.70(6)(~~5~~)(b) FS. Law Implemented 376.70(3) FS. History—New 2-19-95, Amended 6-19-96, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Alan R. Fulton, Senior Tax Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)488-8026, or e-mail: fultona@dor.state.fl.us.

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Charles B. Strausser, Revenue Program Administrator II, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443; telephone number (850)922-4746

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 20, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed amendments to Rule Chapter 12A-16, F.A.C., Rental Car Surcharge, were noticed for a rule development workshop in the Florida Administrative Weekly on October 25, 2002 (Vol. 28, No. 43, pp. 4585-4587). A rule development workshop was held on November 20, 2002, in Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida. No one appeared to provide comment regarding these proposed rule changes; the Department has received no written comments. Technical changes have been made by the Department and are included in the Notice of Proposed Rulemaking.

**DEPARTMENT OF REVENUE**

**Miscellaneous Tax**

RULE TITLES:	RULE NOS.:
Registration	12B-12.005
Returns and Filing Requirements	12B-12.006
Refunds and Credits; Recordkeeping Requirements	12B-12.007
Public Use Forms	12B-12.009

PURPOSE AND EFFECT: The purpose of the proposed changes to Rule Chapter 12B-12, F.A.C., Tax on Perchloroethylene, is to: (1) provide current guidelines for registration with the Department for purposes of the tax on perchloroethylene (“perc”); (2) to provide current guidelines for the payment of the tax on perc; (3) provide current guidelines on how to obtain a refund of tax paid on perc; (4) remove obsolete provisions; and (5) remove the recitation of statutory provisions.

SUMMARY: The proposed amendments to Rule 12B-12.005, F.A.C. (Registration): (1) correct the title of form DR-166, Florida Pollutant Tax Application; (2) provide that any person who produces, sells, or imports perchloroethylene (“perc”) in Florida must obtain a Pollutants License; (3) provide that a \$30 registration fee is required for each application; and (4) remove

the incorporation by reference of form DR-110, Pollutants License, which does not meet the definition of a “rule,” as defined in s. 120.542(15), F.S.

The proposed amendments to Rule 12B-12.006, F.A.C.: (1) change the title to “Returns and Filing Requirements”; (2) clarify the definition of the term “legal holiday”; (3) provide that payment of taxes required to be made by electronic means, returns required to be submitted by electronic means, and returns when no tax is due must be submitted to the Department as provided in Rule Chapter 12-24, F.A.C.; and (4) remove the recitation of penalties for late filing and payment of the tax imposed under ss. 376.75(9)(a) and 212.12(2), F.S.

The proposed amendments to Rule 12B-12.007, F.A.C.: (1) change the title to “Refunds and Credits; Recordkeeping Requirements”; (2) provide that an application for a refund of the tax on perchloroethylene must be filed on form DR-26, Application for Refund, and that it must meet the requirements of s. 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C.; and (3) provide when an application for refund must be filed with the Department.

The proposed repeal of Rule 12B-12.009, F.A.C. (Public Use Forms), removes an unnecessary rule which incorporates by reference forms that are incorporated by reference in Rules 12B-12.005 and 12B-12.006, F.A.C.

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

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

SPECIFIC AUTHORITY: 212.17(6), 212.18(2), 213.06(1), 376.75(9)(b) FS.

LAW IMPLEMENTED: 212.11(1)(b),(d), 212.12(2)(a),(3),(4), 213.235, 213.755, 376.75 FS.

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

TIME AND DATE: 10:00 a.m., January 30, 2003

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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Alan R. Fulton, Senior Tax Specialist, Technical Assistance and Dispute Resolution,

Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)488-2577, e-mail (fultona@dor.state.fl.us)

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

THE FULL TEXT OF THE PROPOSED RULES IS:

12B-12.005 Registration.

(1) ~~Every Any person must file a Florida Pollutant Tax Application (form DR-166, incorporated by reference in Rule 12B-5.150, F.A.C.) with the Department for a pollutant license before producing, selling, importing, or causing perc who produces, sells, imports, or causes to be imported into perc in Florida and obtain a pollutant license from for any purpose is required to register and become licensed with the Department. A \$30 registration fee must accompany each application.~~

~~(2)(a) To apply for a license an applicant must submit to the Department Form DR-166, Application for Florida License to Produce or Import Taxable Pollutants, incorporated in Rule 12B-5.012, F.A.C., by reference.~~

~~(b)1. The Executive Director or the Executive Director's designee, upon receipt of such application, will grant to the applicant a Pollutants License (Form DR-110, incorporated in Rule 12B-5.012, F.A.C., by reference.~~

~~(2)2. Producing in, importing into, selling in, or causing perc to be imported into Florida for any purpose without first obtaining a license or after such license has been canceled by the Executive Director or the Executive Director's designee is prohibited.~~

Specific Authority 212.17(6), 212.18(2), 213.06(1), 376.75(9)(b) FS. Law Implemented 376.75(2) FS. History—New 2-19-95, Amended 3-18-96, \_\_\_\_\_.

12B-12.006 Returns, ~~Regulations~~ and Filing Requirements.

(1)(a) When perc is sold in Florida, the tax is due to the Department on the first day of the month following the month of sale.

(b) When a person who has purchased perc for use in a dry-cleaning facility in Florida cannot document that the tax has been paid, the tax is due to the Department on the first day of the month following the month of purchase or importation.

~~(c)4. The tax is required to should be reported on the Pollutant Tax Return (form Form DR-904), incorporated by reference in Rule 12B-5.150 12B-5.012, F.A.C., by reference.~~

~~2. A return is required to be filed even if no tax is due.~~

~~3. There is no collection allowance for timely remitting the tax.~~

(2)(a) ~~Except as provided in Rule Chapter 12-24, F.A.C., the The payment and the Pollutant Tax Return (form Form DR-904, incorporated by reference in Rule 12B-5.150, F.A.C.), must be delivered to either reach the office of the~~

Department or be postmarked on or before the 20th day of the month following the month of the taxable transaction to avoid penalty and interest for late filing.

~~(b)1. If the 20th day falls on a Saturday, Sunday, or a legal holiday, payments accompanied by returns will shall be accepted as timely if postmarked or delivered to the Department department on the next succeeding day which is not a Saturday, Sunday, or legal holiday.~~

2. For this purpose, a legal holiday means shall mean a holiday that is observed by federal or state agencies as a legal holiday, as this term is defined in Chapter 683, F.S., and s. 7503, Internal Revenue Code of 1986, as amended and in effect on January 1, 1995, which is incorporated by reference in this rule. A "legal holiday" pursuant to s. 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

(b) Electronic filing of payments and returns must be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C., when:

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

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

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

(3) No change.

~~(4)(a) When any person fails to make a return or remit the tax, or any portion thereof, on or before the day when such tax is required to be paid, a delinquent penalty will be added to the unpaid tax in the amount of 10 percent of any unpaid tax if the failure is not for more than 30 days. An additional delinquent penalty of 10 percent of any unpaid tax will be assessed for each additional 30 days, or fraction thereof, during the time the failure continues, not to exceed, however, a total delinquent penalty of 50 percent in the aggregate.~~

~~(b) A mandatory minimum delinquent penalty of \$10 applies to all delinquent returns.~~

Specific Authority 212.17(6), 212.18(2), 213.06(1), 376.75(9)(b) FS. Law Implemented 212.11(1)(b),(d), 212.12(2)(a),(3),(4), 213.235, 213.755, 376.75 FS. History—New 2-19-95, Amended 3-18-96, 4-2-00, \_\_\_\_\_.

12B-12.007 Refunds and Credits; ~~Required~~ Recordkeeping Requirements.

(1) No change.

(2)(a) Any person entitled to a refund of tax paid on perc to the Department must file an Application for Refund (form DR-26, incorporated by reference in Rule 12-26.008, F.A.C.) with the Department use Form DR-26 (Application for Refund from the State of Florida). Form DR-26 must meet the requirements of s. 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C.

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

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

~~(b) Form DR-26 (Application for Refund from the State of Florida), is incorporated in Rule 12-26.008, F.A.C., and made a part of this rule chapter by reference.~~

(b)(e) No change.

(3) through (4) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1), 376.75(9)(b) FS. Law Implemented 376.75(11) FS. History--New 2-19-95, Amended 3-18-96.

12B-12.009 Public Use Forms.

Specific Authority 212.17(6), 212.18(2), 213.06(1), 376.75(9)(b) FS. Law Implemented 376.75(8) FS. History--New 2-19-95, Amended 3-18-96, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Alan R. Fulton, Senior Tax Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)488-8026, or e-mail: fultona@dor.state.fl.us

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Charles B. Strausser, Revenue Program Administrator II, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443; telephone number (850)922-4746

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 20, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed amendments to Rule Chapter 12B-12, F.A.C., Tax on Perchloroethylene, were noticed for a rule development workshop in the Florida Administrative Weekly on October 25, 2002 (Vol. 28, No. 43, pp. 4587-4590).

A rule development workshop was held on November 20, 2002, in Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida. No one appeared to provide comment regarding these proposed rule changes; the Department has received no written comments. Technical changes have been made by the Department and are included in the Notice of Proposed Rulemaking.

**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**

DOCKET NO.: 01-10R

RULE CHAPTER TITLE: Sovereignty Submerged Lands Management  
 RULE CHAPTER NO.: 18-21

RULE TITLES:	RULE NOS.:
Definitions	18-21.003
Management Policies, Standards, and Criteria	18-21.004
Delegation of Authority	18-21.0051
Applications for Public Easement	18-21.009
Applications for Private Easement	18-21.010
Payments and Fees	18-21.011

PURPOSE, EFFECT AND SUMMARY: The Department of Environmental Protection, as staff to the Board of Trustees, proposes to establish criteria for the placement of telecommunication cables and conduits on sovereignty submerged lands off the coast of Florida. This will include new application and easement fees for the use of sovereignty submerged lands for such telecommunication projects. In addition, DEP is proposing to clean up some related language regarding private and public easements.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jeanese McCree, Bureau of Beaches and Wetland Resources, Tallahassee, (850)245-8486, Fax (850)245-8499, e-mail: jeanese.mccree@dep.state.fl.us

The full text of this notice is published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**DEPARTMENT OF CITRUS**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Identification When Transporting Citrus Fruit and Records To Be Kept on Citrus Fruit Received;	
Bond Disclaimer	20-2

RULE TITLES:	RULE NOS.:
Form of Required Trip Ticket	20-2.002
Trip Ticket Required for Each Load of Citrus Fruit	20-2.003

PURPOSE AND EFFECT: Amendment adding requirements for organically certified citrus fruit be transported with a different trip ticket than other fresh fruit.

SUMMARY: Adding requirements for an organic trip ticket.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Regulatory Cost has been prepared.

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

SPECIFIC AUTHORITY: 601.10(1),(7), 601.69, 601.731(2) FS.

LAW IMPLEMENTED: 601.731(2) FS.

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

TIME AND DATE: 10:30 a.m., February 19, 2003

PLACE: Department of Citrus Building, 1115 East Memorial Boulevard, Lakeland, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Alice P. Wiggins, License & Regulation Specialist, Legal Department, Florida Department of Citrus, P. O. Box 148, Lakeland, Florida 33802-0148

THE FULL TEXT OF THE PROPOSED RULES IS:

20-2.002 Form of Required Trip Ticket.

The documentation required to be in possession of anyone operating a motor vehicle hauling citrus fruit in bulk or in unclosed containers for commercial purposes on the highways of this State shall be ~~either: numbered in sequence and in a form approved by the Division of Fruit and Vegetable Inspection.~~

(1) Numbered in sequence and in a form approved by the Division of Fruit and Vegetable Inspection; or

(2) For organically certified citrus fruit, numbered in sequence and in a form approved and issued by the Florida Department of Agriculture, Division of Fruit & Vegetables. Such form shall contain the following statement in bold type in a conspicuous place: "ANY PERSON WHO KNOWINGLY SELLS OR LABELS A PRODUCT AS ORGANIC IN VIOLATION OF THE FEDERAL ORGANIC FOODS PRODUCTION ACT AND/OR USDA NATIONAL ORGANIC PROGRAM IS SUBJECT TO A FEDERAL PENALTY OF UP TO \$10,000 PER VIOLATION."

Specific Authority 601.731(2) FS. Law Implemented 601.731(2) FS. History—Formerly 105-1.16(2), Revised 1-1-75, Formerly 20-2.02, Amended \_\_\_\_\_.

20-2.003 Trip Ticket Required for Each Load of Citrus Fruit.

(1) Each trip ticket shall be made out in triplicate with one copy given to the grower, or dealer if acquired from a dealer, one copy retained by the harvester and one copy to be delivered to the scale operator or receiver at the load destination. If the harvester so elects, the trip ticket may be made out in quadruplicate and one copy shall be delivered to the State inspector at the receiving plant.

(2) The trip ticket portion of the form shall be completely filled in prior to the hauling of any citrus fruit for commercial purposes on the highways of this State. If a quadruplicate form is used, the harvester may omit the grower’s name from the copy delivered to the scale operator or receiver at the load destination and substitute a grower code designation; provided that the same code designation and the grower’s name shall appear on the other three copies.

(3) If fruit in a load is made up of lots from more than one grove, a separate trip ticket should be prepared for each grove from which the fruit was picked and a copy of each trip ticket shall accompany the load to its destination.

(4) If all of the fruit in a load did not come from a single grove but was mixed at a packinghouse or at an intermediate handler’s loading bin, then a single trip ticket may accompany the load from the packinghouse or intermediate handler’s loading bin to its next point of destination. In this event, the top half of the ticket should reflect either:

(a) The name of each individual grower, grove and grove location from which the fruit came, or

(b) The words “mixed load” on the appropriate lines.

(5) For all “mixed loads,” the citrus fruit dealer doing the mixing shall be responsible for having in his records a completed trip ticket for each portion of the load so mixed showing all information required for transporting the fruit from the grove to the location where it was mixed.

(6) Prior to hauling any organically certified citrus fruit for commercial purposes on the highways of this State, an organic trip ticket must be completed in quadruplicate.

(a) The trip ticket shall indicate the USDA approved certifying agency name, organic grove registration number, grower name, name of the dealer, trailer number, driver’s name and such other information as deemed necessary.

(b) One copy of the trip ticket shall be given to the grower, one copy retained by harvester/dealer, one copy delivered to the Florida Department of Agriculture, Division of Fruit & Vegetables and one copy delivered to the scale operator.

(c) The trip ticket shall be completed prior to the hauling of citrus fruit.

Specific Authority 601.10(1),(7), 601.69, 601.731(2) FS. Law Implemented 601.731(2) FS. History—Formerly 105-1.16(2), Revised 1-1-75, Formerly 20-2.03 Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ken Keck, General Counsel

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Ken Keck, General Counsel

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 20, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 6, 2002

DEPARTMENT OF CITRUS

RULE CHAPTER TITLE: Containers, Packs, Stamping and Labeling of Fresh Fruit  
RULE CHAPTER NO.: 20-39

RULE TITLE: Organic Grove Registration Program  
RULE NO.: 20-39.017

PURPOSE AND EFFECT: New rule providing guidelines for a registration program of organic growers to aid enforcement of proper citrus fruit labeling and to assist with estimates of organic citrus fruit volumes.

SUMMARY: Establishing the Organic Grove Registration Program.



SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Regulatory Cost has been prepared.

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

SPECIFIC AUTHORITY: 601.10(7), 601.99, 601.731 FS.

LAW IMPLEMENTED: 601.10(7), 601.99, 601.731 FS.

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

TIME AND DATE: 10:30 a.m., February 19, 2003

PLACE: Department of Citrus Building, 1115 East Memorial Boulevard, Lakeland, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Alice P. Wiggins, License and Regulation Specialist, Legal Department, Florida Department of Citrus, P. O. Box 148, Lakeland, Florida 33802-0148

THE FULL TEXT OF THE PROPOSED RULE IS:

20-39.017 Organic Grove Registration Program.

To aid enforcement of proper citrus fruit labeling and to assist with estimates of organic citrus fruit volumes, an Organic Grove Registration Program shall be established as herein provided.

(1) All groves placing certified organic citrus fruit into commercial channels shall be registered with Division of Fruit & Vegetables, License and Bond as an organic grove by August 1 of each year.

(2) The registration form shall include proof of organic certification, the USDA approved certifying agency name, organic grove registration number, the name of the owner, the grove location as established by G.P.S. coordinates, the varieties of fruit, an estimate of production by volume, and such other information as may be deemed necessary by Florida Department of Citrus.

(3) Any citrus fruit placed in commercial channels as certified organic citrus fruit shall come from a registered organic grove and shall be moved on an organic trip ticket.

Specific Authority 601.10(7), 601.99, 601.731 FS. Law Implemented 601.10(7), 601.99, 601.731 FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Ken Keck, General Counsel

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Ken Keck, General Counsel

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 20, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 6, 2002

**DEPARTMENT OF CITRUS**

RULE CHAPTER TITLE: Ownership and Use of "Florida Xtra Sweet" Certification Mark  
RULE CHAPTER NO.: 20-114

RULE TITLES: Ownership  
RULE NOS.: 20-114.001

Permission Required for Use  
General Restrictions and Standards on the Use of "Florida Xtra Sweet" Mark  
20-114.002  
20-114.003

Use on Fruit, Containers and Merchandise  
Withdrawal of License or Permission  
20-114.004  
20-114.005

PURPOSE AND EFFECT: New rule chapter providing standards and requirements for the "Florida Xtra Sweet" certification mark for use on fresh Florida grapefruit.

SUMMARY: Requirements for use of "Florida Xtra Sweet" certification mark.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Regulatory Cost has been prepared.

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

SPECIFIC AUTHORITY: 601.10(1), 601.11, 601.15 FS.

LAW IMPLEMENTED: 601.101 FS.

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

TIME AND DATE: 10:30 a.m., February 19, 2003

PLACE: Department of Citrus Building, 1115 East Memorial Boulevard, Lakeland, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Alice P. Wiggins, License & Regulation Specialist, Legal Department, Florida Department of Citrus, P. O. Box 148, Lakeland, Florida 33802-0148

THE FULL TEXT OF THE PROPOSED RULES IS:

20-114.001 Ownership.

The "Florida Xtra Sweet" certification mark, as shown below, is a certification mark of the State of Florida, Department of Citrus.

INSERT MARK

All right, title and interest in and to said mark, granted to and vested in the State of Florida, Department of Citrus, via State and Federal laws, is hereby noticed to all interested persons.

Specific Authority 601.10(1), 601.11, 601.15 FS. Law Implemented 601.101 FS. History--New

20-114.002 Permission Required for Use.

Use of said mark by any Florida licensed citrus fruit dealer registered as a fresh fruit shipper, in any manner will not be permitted without a license or other express written permission from the Department of Citrus and unless such use is in conformity with the requirements of this rule. However, such permission shall not be denied to any person, firm or corporation who complies with the requirements of this rule, it being the express purpose of the Department of Citrus to encourage widespread use and, at the same time, to protect the integrity of the mark.

Specific Authority 601.10(1), 601.11, 601.15 FS. Law Implemented 601.101 FS. History--New

20-114.003 General Restrictions and Standards on the Use of "Florida Xtra Sweet" Mark.

(1) Use of this mark shall be restricted to use in conjunction with the advertising, promotion, merchandising, and packaging of fresh grapefruit which is grown in the state of Florida, and which meet the applicable grade and quality standards for grapefruit as set forth in chapters 601.16, 601.17, 601.18, Florida Statutes, section 20-35.005, Department of Citrus rules, and 7 CFR Part 51, "United States Standards for Grades of Florida Grapefruit" as amended August 1, 1996.

(2) In addition, to be eligible to carry the mark, fruit must meet the following maturity standards:

(a) Total soluble solids (Brix) of the juice shall be not less than 9.

(b) Ratio shall be no less than 8.5:1.

(3) Each licensee or other authorized user of said mark shall be required, as a condition for such authorization, to allow reasonable and periodic inspections by a Department of Citrus representative or agent, of the pertinent USDA inspection records and packing and shipping premises of said users at all stages in the channel of trade of such citrus products in order to determine whether or not said citrus products meet the requirements set forth herein and otherwise to protect the integrity of said mark.

(4) The mark shall not be used in any advertising, promotion, merchandising or packaging in lieu of a brand name. The mark may be used in such a way as to dominate the packaging, however, it must not be used in conjunction with a brand name in such a manner as to appear to be a part of or dominate said brand name. Further, the mark must be used in a prominent and conspicuous manner when used on packaging.

(5) The mark, as shown in section 20-114.001, must be used in its entirety. This does not prohibit use of the words "Florida Xtra Sweet" in the absence of graphics.

(6) Each licensee or other authorized user of the mark shall deliver to the Department of Citrus for its records, a finished sample of any material bearing the mark.

(7) The licensee shall indemnify the Department and save it harmless with respect to any claims arising out of the use of its products bearing the mark by any person, or any claims arising out of misbranding or false or misleading advertising by the licensee.

Specific Authority 601.10(1), 601.11, 601.15 FS. Law Implemented 601.101 FS. History--New

20-114.004 Use on Fruit, Containers and Merchandise.

(1) The mark may, at the option of the shipper, be applied directly to the skin of the fruit, or may be used on any approved shipping container or retail package, containing qualifying Florida grapefruit. The mark may be used in such a way as to dominate the packaging, however, it must not be used in conjunction with a brand name in such a manner as to appear to be a part of or dominate said brand name.

(2) No licensee shall use the mark on any premiums, gift, novelty items or other non-citrus merchandise without the express permission of the Department of Citrus. In no case shall such items be used for resale.

Specific Authority 601.10(1), 601.11, 601.15 FS. Law Implemented 601.101 FS. History--New

20-114.005 Withdrawal of License or Permission.

The Department of Citrus reserves the right to withdraw any given license or permission to use the mark upon the failure of the authorized user to comply with the provisions set forth herein. In determining whether the product complies with the quality standards prescribed, the test methods approved by the Department and incorporated by reference in "Methods to Determine Compliance," chapter 20-14, Department of Citrus rules, shall be employed. The Department shall have the right to terminate the license with immediate effect in the event the licensee has not made any bona fide commercial use of the mark for more than one year.

Specific Authority 601.10(1), 601.11, 601.15 FS. Law Implemented 601.101 FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Ken Keck, General Counsel

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Ken Keck, General Counsel

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 20, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 6, 2002

**AGENCY FOR HEALTH CARE ADMINISTRATION**

**Division of Health Quality Assurance**

RULE CHAPTER TITLE: Minimum Standards for Home Medical Equipment Providers

RULE CHAPTER NO.: 59A-25

RULE TITLE: Licensure Requirements

RULE NO.: 59A-25.002

**PURPOSE AND EFFECT:** The purpose of this rule is for rule reduction and clarification.

**SUMMARY:** The proposed rule amendment deletes language that states AHCA will send out applications 120 to 150 days prior to expiration of the license. Language is added to clarify that the application with its forms and attachments can be accessed through the AHCA Internet web site and an alternative method will be to obtain a copy of the application from AHCA by mail.

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

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

**SPECIFIC AUTHORITY:** 400.935 FS.

**LAW IMPLEMENTED:** Part X of Chapter 400, 400.92-.957 FS.

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

**TIME AND DATE:** 10:00 a.m. – 12:00 noon, January 27, 2003

**PLACE:** Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Conference Room 3207D, Tallahassee, Florida

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:** Monteen S. Heikkila, Agency for Health Care Administration, Home Care Unit, Mail Stop 34, 2727 Mahan Drive, Tallahassee, FL 32308, (850)414-6010 or heikkilm@fdhc.state.fl.us.

**THE FULL TEXT OF THE PROPOSED RULE IS:**

59A-25.002 Licensure Requirements.

(1) through (4) No change.

(5) Renewal application:

(a) An application for renewal of licensure, with its forms and attachments, is required. AHCA form number 3110-1005, April, 2002, incorporated by reference must be submitted. The application, with its forms and attachments, can be downloaded from the Internet at the following AHCA web site address: <http://www.fdhc.state.fl.us/MCHO/HealthFacilityRegulation/HomeCare/app4license.doc>. If a renewal applicant does not have access to the Internet, the application with its forms and attachments will be provided by AHCA as referenced in paragraph 59A-25.002(3)(c), F.A.C. AHCA will send out applications 120 to 150 days prior to the expiration of the license. It is the responsibility of the HME provider to submit an application, within the specified time frames, whether or not they receive separate notification from AHCA of the impending expiration of the license.

(b) through (7) No change.

Specific Authority 400.935 FS. Law Implemented Part X of Chapter 400, 400.92-.957 FS. History--New 6-4-00, Amended 10-6-02,\_\_\_\_\_.

**NAME OF PERSON ORIGINATING PROPOSED RULE:** Monteen Heikkila, Program Administrator, Agency for Health Care Administration

**NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE:** Rhonda M. Medows, MD, FAAFP, Secretary

**DATE PROPOSED RULE APPROVED BY AGENCY HEAD:** December 18, 2002

**DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:** November 15, 2002

**AGENCY FOR HEALTH CARE ADMINISTRATION  
Hospital and Nursing Home Reporting Systems and Other Provisions Relating to Hospitals**

<b>RULE TITLES:</b>	<b>RULE NOS.:</b>
Definitions	59E-5.101
Florida Hospital Uniform Reporting System	59E-5.102
Reporting Requirements	59E-5.103
Notice of Violation or Deemed Not Filed and Response	59E-5.205

Worksheet C-3a (rev.) V-3 – Statement of Patient Care Revenue and Deductions From Revenue by Payer Class for Inpatient and Outpatient Services

**PURPOSE AND EFFECT:** The Agency intends to establish and adopt procedures and specifications for the implementation of Section 16 of Chapter 2000-256, Laws of Florida. The rules are being amended to comply with the statutory provisions of section 395.701, F.S., and to provide an updated reporting mechanism to improve the efficiency and accuracy of financial data collection. To that end, the following changes will be made to the current FHURS Manual: In Chapter II, "Reporting Forms and Instructions" pages 2.45, 2.46, and 2.47 dated 8/89 will be deleted and replaced by pages 2.45, 2.46, 2.46a, and 2.47 dated 8/01. The FHURS Manual is incorporated by reference in F.A.C.R. 59E-5.102. Certain text changes necessary to update F.A.C.R. 59E-5.102 are not included in these proposed changes because they are part of a separate proposed rule addressing unrelated changes to the FUHRS Manual.

**SUMMARY:** The 2000 Session of the Florida Legislature reduced the amount hospitals are assessed annually for the Public Medical Assistance Trust Fund ("PMATF") by amending section 395.701(2), F.S., to lower the assessment percentage based on outpatient hospital net revenues. The proposed changes being made to the Agency's Florida Hospital Uniform Reporting System are necessary to implement certain of the changes made to section 395.701, F.S. The Agency previously conducted rule development and public hearings leading to publication of earlier forms of these proposed rules.

After publication and a second challenge, the most recent proposed rules were withdrawn by publication of notice in the FAW on May 31, 2002.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST:** There should be no additional cost to the Agency for Health Care Administration, any agency of state or local government, small counties, small cities, small businesses, or individuals. The effect on state revenues has already been considered by the Legislature. Estimated costs consist of only the cost for each hospital in preparation time for the revised Form C-3a. In the initial year, start up costs are estimated to be 80 to 160 hours per hospital at approximately \$25.00 per hour; this will be reduced in subsequent years. An estimated 233 hospitals will be expected to comply with the amendments.

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

**SPECIFIC AUTHORITY:** 408.15(8) FS.

**LAW IMPLEMENTED:** 395.701(2), 408.061(2),(3),(4)(a),(7) FS.

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

**TIME AND DATE:** 10:00 a.m. January 28, 2003

**PLACE:** Agency for Health Care Administration, Conference Room C, Building 3, 2727 Mahan Drive, Tallahassee, Florida 32308

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS:** Chris Augsburger, Regulatory Analyst Supervisor, Bureau of Health Facility Regulation/Financial Analysis, 2727 Mahan Drive, MS #28, Tallahassee, FL 32308-5403

**THE FULL TEXT OF THE PROPOSED RULES IS:**

**59E-5.101 Definitions.**

The definitions set forth in Section 408.032, F.S., and the following definitions shall apply to this Chapter, and to the Florida Hospital Uniform Reporting System (FHURS) Manual, unless otherwise specified:

(1) "Actual report" is the report of a hospital's actual financial and statistical data as required by the reporting forms contained in the FHURS Manual.

(2) "Adjusted admission" is the sum of acute admissions and intensive care admissions divided by the ratio of inpatient revenues generated from acute, intensive, ambulatory, and ancillary patient services to gross revenues, unless the hospital reports all sub-acute admissions in which case "adjusted admission" is the sum of sub-acute admissions divided by the ratio of total inpatient revenues to gross revenues.

(3) "Audited actual experience", "audited actual data", or "audited financial statements" means data contained within financial statements examined by an independent, Florida-licensed, certified public accountant in accordance with generally accepted auditing standards and including an opinion on the audited financial statements.

(4) "Change in hospital ownership" means that a majority of the ownership or the controlling interest of the hospital is transferred or assigned. A change in ownership includes, but is not limited to, the acquisition of the hospital by any person or other legal entity by any means; the leasing of the hospital when the lessee agrees to undertake or provide services at the hospital to the extent that legal liability for operation of the hospital rests with the lessee; conversion of the hospital's type or kind of business organization; the sale, acquisition, assignment or other voluntary or involuntary transfer of a majority of the ownership or the controlling interest of the hospital; merger of the hospital corporation into a new corporation; or consolidation of the hospital corporation with one or more corporations resulting in the creation of a new corporation.

(5) "Charity care patient" means a medically indigent patient whose charges are, in whole or in part, classified as "Charity/Uncompensated Care – Other" who meets the requirements of Account 5960, Chapter III, FHURS Manual and/or "Charity/Uncompensated Care – Hill Burton" who meets the requirements of Account 5950, Chapter III, FHURS Manual.

(6) "Chart of accounts" means the list of accounts, code numbers, definitions, standard units of measure and principles and concepts included in the FHURS Manual.

(7) "Day of admission" means the day on which a person is admitted to a hospital or sub-acute facility for bed occupancy for purposes of receiving inpatient hospital or sub-acute services and counts as one inpatient day. If admission and discharge or death occur the same day, the day is considered a day of admission and counts as one inpatient day.

(8) "Executive staff members" means the Secretary, ~~Executive Director~~ and such other staff members as designated by the Secretary, ~~Executive Director~~.

(9) "FHURS Manual" means the Florida Hospital Uniform Reporting System Manual as adopted by the Agency Board and incorporated by reference in Rule 59E-5.102, F.A.C.

(10) "Financial statements" means a presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate a hospital's economic resources or obligations at a point in time, or the changes therein for a period of time, and the results of operations for a period of time in accordance with generally accepted accounting principles.

(11) “Generally accepted accounting principles” (GAAP) means the term as defined in Rule 61H1-20.007, F.A.C., Department of Business and Professional Regulation, Board of Accountancy accounting principles or standards generally accepted in the United States, as published by the American Institute of Certified Public Accountants, and Statements of Financial Accounting Standards and interpretations thereof as published by the Financial Accounting Standards Board and as may be amended by rule of the Department of Professional Regulation Board of Accountancy.

(12) “Generally accepted auditing standards” (GAAS) means the term as defined in Rule 61H1-20.008, F.A.C., Department of Business and Professional Regulation, Board of Accountancy generally accepted auditing standards adopted by the American Institute of Certified Public Accountants, together with interpretations thereof, as set forth in Statements on Auditing Standards as published by the American Institute of Certified Public Accountants and as may be amended by rule of the Department of Professional Regulation Board of Accountancy.

(13) “Gross patient services revenue,” means the sum of daily hospital service charges, ambulatory service charges, ancillary service charges; including all charges for sub-acute services.

(14) “Gross operating revenue” means “Gross revenue” as that term is defined in Section ~~408.07(22)~~ 407.002(12), F.S.

(15) “Hospital” means a health-care institution, as defined in Section 395.002(13)(6), F.S., and licensed pursuant to Chapter 395, F.S.

(16) “Inpatient Admission” means a person who has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services. An inpatient is a patient as defined in Rule 59E-7.011(4), F.A.C. A person is considered an inpatient if formally admitted by the hospital as an inpatient by physician order with the expectation that the individual would remain at least overnight and occupy a bed.

(17) “Inpatient Revenue” or “Gross Inpatient Revenue” means gross charges generated from the provision of hospital services to any patient admitted to the hospital as an inpatient. ~~When an individual is furnished outpatient services and is thereafter admitted as an inpatient of the same hospital before midnight of the next day, the outpatient charges are reported as inpatient revenue.~~

(18) “Net Inpatient Revenue” means inpatient revenue minus deductions from inpatient revenue.

~~(19)(48)~~ “Net Operating Revenue” means “Net revenue” as that term is defined in Section 408.07(34), F.S. ~~gross revenue minus deductions from revenue plus other operating revenue.~~

(20) “Net Outpatient Revenue” means outpatient revenue minus deductions from outpatient revenue.

~~(21)(49)~~ “Non-Operating Revenue” means revenue not directly related to the entity’s ongoing or principal operations. Non-operating revenue may include unrestricted gifts, unrestricted income from endowment funds; gain on sale of hospital properties, and income and gains from investments of general funds.

(22) “Other Operating Revenue” means a class of revenues which are defined in Section 408.07(38), F.S.

(23) “Outpatient” means a person who receives a pre-admission assessment, a diagnostic procedure, or a therapeutic procedure at a hospital licensed under Chapter 395, F.S., who is not an inpatient admission.

(24) “Outpatient Revenue” or “Gross Outpatient Revenue” means total charges for hospital services rendered to outpatients.

~~(25)(20)~~ “Patient day” means a day, which begins at midnight and ends 24 hours later. The midnight-to-midnight method must be used even if the provider uses a different definition of a patient day for its statistical or other purposes. Whenever a patient occupies a bed in more than one patient care area in one day, the inpatient day should be counted only in the patient care area in which the patient was located at the census-taking hour. The day of admission will be counted as a full day; however, the day of discharge is not counted. A full day must be counted when a patient is admitted as an inpatient with the expectation of the patient remaining overnight and occupying a bed, but is discharged on the same day.

~~(26)(21)~~ “Prior year report” means, collectively, the actual report and the corresponding financial statements with an audit report of an independent Florida-licensed certified public accountant for the same reporting period and including an opinion on the audited financial statements.

(27) “Total Deductions From Inpatient Revenue” means that portion of total deductions from gross revenue, as defined in sec. 395.701(1), F.S., directly attributable to inpatient revenue.

(28) “Total Deductions From Outpatient Revenue” means that portion of total deductions from gross revenue, as defined in sec. 395.701(1), F.S., directly attributable to outpatient revenue.

(29)(22) “Total net revenue” means the sum of net patient services revenue, other operating revenue, and non-operating revenue.

(30) “Total Net Patient Services Revenue” means gross patient service revenue minus deductions from revenue as defined in Section 408.07(16), F.S.

(31)(23) “Total revenue” means the sum of gross patient services revenue, other operating revenue and non-operating revenue.

Specific Authority 408.15(8) FS. Law Implemented 395.701(1),(2), 408.032, 408.061(2),(3),(4)(a),(7) FS. History–New 6-11-92, Formerly 10N-5.101, Amended \_\_\_\_\_.

59E-5.102 Florida Hospital Uniform Reporting System.

(1) The Agency for Health Care Administration hereby adopts and establishes a uniform system for hospital reporting by adopting and incorporating by reference the Florida Hospital Uniform Reporting System (FHURS) Manual, Version 92-1, April 9, 1992. This manual, which includes reporting forms, has the force and effect of the Agency for Health Care Administration’s rules.

(2) A copy of the current FHURS Manual may be obtained, upon payment of the cost of reproduction, by writing to: The Agency for Health Care Administration, ~~Director of Public Information, 2727 Mahan Drive, MS #28 325 John Knox Road, 301 The Atrium, Tallahassee, Florida 32308 32303.~~

Specific Authority 408.15(8) FS. Law Implemented 395.701, 408.061(2),(3),(4)(a),(7) FS. History–New 6-11-92, Formerly 10N-5.102, Amended 2-24-94, \_\_\_\_\_.

59E-5.103 Reporting Requirements.

(1) Each hospital must comply with the reporting requirements set forth in Rule 59E-2.015, F.A.C.

(2) Each report or document must contain all information specified for that report or document in the FHURS Manual and shall be submitted on the forms and in the formats set forth in the FHURS Manual.

(3) Separate reports are required for each licensed hospital, regardless of ownership or operation.

(4) Extensions for filing a report may be sought pursuant to the provisions of Rule 59E-2.017, F.A.C. However, no extension may be granted for submitting corrections pursuant to Rules 59E-5.205, 59E-5.304, and 59E-5.317, F.A.C.

(5) Prior year reports shall be filed in compliance with the requirements of Rule 59E-5.201, F.A.C.

~~(6) Budget reports shall be filed in compliance with the requirements of Rule 59E-5.301.~~

~~(6)(7) Hospitals changing ownership must comply with the reporting requirements set forth in Rules 59E-5.202 and 59E-5.302, F.A.C., and must submit written notification of the ownership change within 30 days of the effective date of the change. The new owner shall submit the notification, which shall include:~~

- ~~(a) Identification of the new owner;~~
- ~~(b) The address of the new owner;~~
- ~~(c) The status of the hospital’s license;~~
- ~~(d) The status of Medicaid and Medicare certification and identification of provider numbers; and~~
- ~~(e) Such other information as may be necessary to identify the new owner;~~
- ~~(f) The name of the hospital prior to and after the ownership change; and~~

~~(g) Such other information as may be required by the Agency Board to identify the facility, its owner and to assure that all reporting requirements are met by the hospital.~~

~~(7)(8) Hospitals changing fiscal year end must comply with the reporting requirements set forth in Rules 59E-5.202 and 59E-5.302, F.A.C., and must submit written notification of the fiscal year end change within 30 days of such change. The notification shall include:~~

- ~~(a) Identification of the hospital;~~
- ~~(b) The previous fiscal year end;~~
- ~~(c) The new fiscal year end; and~~
- ~~(d) The reason for the change in fiscal year end.~~

~~(8)(9) Hospitals which are seeking licensure for the first time or which are seeking licensure for an existing hospital due to a change in ownership shall so notify the Agency Board within 30 days of the date that an application for a hospital license pursuant to Section 395.003, F.S., is filed.~~

Specific Authority 408.061(2),(3),(4)(a),(7), 408.15(8) FS. Law Implemented 395.701, 408.061(2),(3),(4)(a),(7) FS. History–New 6-11-92, Formerly 10N-5.103, Amended \_\_\_\_\_.

59E-5.205 Notice of Violation or Deemed Not Filed and Response.

(1) Once a report has been filed in accordance with Rule 59E-2.015 and Rule 59E-5.201, F.A.C., the Agency will review the report and determine if:

- ~~(a) It conforms to applicable statutory, rule and FHURS Manual requirements;~~
- ~~(b) The data are mathematically accurate, reasonable and verifiable.~~

(2) If the report does not conform to the above requirements, the report will be deemed "not accepted" and a notice of violation will be sent certified mail, or by other delivery service which provides proof of delivery, to the hospital.

(3) The notice shall clearly indicate the deficiencies found, the corrections or modifications necessary to make it complete or conforming or its data verifiable, as well as the time by which a corrected or modified report must be received by the Agency.

(4) A hospital shall have no fewer than 10 working days following receipt of the notice of violation or notice of deemed not filed to return the requested corrected or modified report to the Agency.

(5) Modifications or corrections to various accounts and worksheet cells shall be made by resubmitting the entire report using the FADES software and be re-transmitted via computer diskette using the formats pursuant to Rule 59E-5.206, F.A.C. The diskette shall be submitted with the following information on an externally affixed label.

- (a) "Corrections to Hospital FHURS Report."
- (b) Hospital Name.
- (c) Hospital Number (8-digit format).
- (d) Reporting period.

(e) "Submission Number" which represents a progressive count of the number of diskettes sent to the agency for this report. A cover letter shall be provided with the diskette outlining the contents of the corrections contained on the diskette.

~~(6) The Agency intends to provide for a transition period in the transmittal of corrections to actual reports. For financial accounting periods ending in calendar 1999 only, paper copies of FHURS Worksheet A 1, A 2, B 1, B 3, B 4, B 4a, C 1, C 2, C 3, C 4, C 5, C 6, C 7, and X 1 will be accepted for corrections. Corrections to FHURS worksheets not specifically identified in this paragraph must be submitted electronically using the FADES software. When a combination of corrections is necessary that includes both the noted and not noted worksheets in this paragraph, the FADES software must be used for all corrections for financial accounting periods ending after calendar 1999, no paper copies of corrected worksheets will be accepted.~~

~~(7)~~ Actual reports must be properly formatted on a 3.5 inch diskette in accordance with Rule 59E-5.206, F.A.C., of this chapter and readable by Agency software, otherwise the report will be deemed not filed and the hospital will be subject to the penalties for late filing as prescribed in this chapter.

~~(8)~~ Hospitals whose reports are deemed not filed resulting from an improperly formatted diskette will receive an edit report that will attempt to describe the formatting deficiencies in sufficient detail to initiate corrective action by the hospital.

Specific Authority 408.061(2),(3),(4)(a),(7),408.15(8) FS. Law Implemented 408.061(2),(3),(4)(a),(7),408.062, 408.08 FS. History—New 6-11-92, Formerly 10N-5.205, Amended 3-28-99, \_\_\_\_\_.

WORKSHEET C-3a (rev.) V-3 – STATEMENT OF PATIENT CARE REVENUE AND DEDUCTIONS FROM REVENUE BY PAYER CLASS FOR INPATIENT AND OUTPATIENT SERVICES

PURPOSE: This worksheet summarizes inpatient and outpatient revenues, deductions from revenue, and net revenue by payer class for all Patient Care Services. This categorization is necessary to properly calculate the assessment for the Patient Medical Assistance Trust Fund (PMATF)

INSTRUCTIONS:

AHCA HOSPITAL NO:

Enter the hospital’s assigned AHCA number.

PERIOD:

Enter the beginning and ending date for the period covered in this report.

For example: 10/01/1999-9/30/2000.

COLUMN DEFINITIONS:

NOTE: The inpatient and outpatient revenue amounts to be reported for each payer class listed are the gross revenues (charges) regardless of the method used to charge for that service.

ACCOUNT NUMBER

The AHCA standardized account number assigned to this payer category.

NOTE: Account numbers are standardized for data processing purposes. No changes or substitutions can be made to these account numbers.

COLUMN 1 – INPATIENT REVENUE

Enter the inpatient revenue amounts associated with each class of payer, for which services were provided during the reporting period.

The total reported in COLUMN 1, Account COO3, must equal the revenue reported in account C370 on LINE 54, COLUMN 1 on WORKSHEET C-3.

COLUMN 2 – OUTPATIENT REVENUE

Enter the outpatient revenue amounts associated with each class of payer, for which services were provided during the reporting period.

The total reported in COLUMN 2, Account COO3, must equal the revenue reported in account C370 on LINE 54, COLUMN 2 on WORKSHEET C-3.

COLUMN 3 – TOTAL PATIENT SERVICE REVENUE

Enter the summation of COLUMN 1 and COLUMN 2.

The total reported in COLUMN 3, Account COO3, must equal the revenue reported in account C370 on LINE 54, COLUMN 3 on WORKSHEET C-3.

COLUMN 4 – TOTAL INPATIENT DEDUCTIONS FROM REVENUE

Enter the amount of inpatient deductions from revenue associated with each class of payer during the reporting period.

COLUMN 5 – TOTAL OUTPATIENT DEDUCTIONS FROM REVENUE

Enter the amount of outpatient deductions from revenue associated with each class of payer during the reporting period.

COLUMN 6 – TOTAL INPATIENT DEDUCTIONS FROM REVENUE

Enter the summation of COLUMN 4 and COLUMN 5.

Amounts reported in this column represent the total revenue deduction for the indicated account. The total in COLUMN 6, Line 19 will also be reported on WORKSHEET C-2, Line 4.

COLUMN 7 – NET INPATIENT REVENUE

Subtract amount of inpatient deductions from revenue in COLUMN 4 from the amount of inpatient revenue reported in COLUMN 1 and enter the result.

COLUMN 8 – NET OUTPATIENT REVENUE

Subtract amount of outpatient deductions from revenue in COLUMN 5 from the amount of outpatient revenue reported in COLUMN 2 and enter the result.

8/01

2.45 and 2.46



WORKSHEET C-3a (rev.) V-3 – STATEMENT OF PATIENT CARE REVENUE AND DEDUCTIONS FROM REVENUE BY PAYER CLASS FOR INPATIENT AND OUTPATIENT SERVICES (CONTINUED)COLUMN 9 – TOTAL NET PATIENT SERVICES REVENUE

Enter the summation of COLUMN 7 and COLUMN 8.

Amounts reported in this column represent the total net patient services revenue for the indicated account. The total in COLUMN 9, LINE 19 will be reported on WORKSHEET C-2, Line 5.

ACCOUNT 5980 – ADMINISTRATIVE, COURTESY, AND POLICY DISCOUNT CARE

This account is used to report the discounting by the hospital of care provided to members of its Governing Board, staff physicians and their families, and members of the clergy. These discounts may range from 10% to 100% of the hospital's bill. If the hospital discounts 100% of the bill, the gross charges should be reported in COLUMNS 1, 2, and 3, ACCOUNT 5905 and a deduction equal to those charges should be reported in COLUMNS 4, 5, and 6, ACCOUNT 5980. If the hospital discounts only a portion of the bill, the gross charges must be reported in the primary classification, e.g., commercial insurance, self pay, etc., and the amount discounted should be reported in account 5980, COLUMNS 4, 5, and 6.

ACCOUNT 5981 – EMPLOYEE DISCOUNTED CARE

Discounts for employees will generally be a secondary deduction of the commercial insurance classification. The hospital's discount portion will be reported in account 5981, COLUMNS 4, 5, and 6. However, the uncollectible amounts of employee deductibles and coinsurance should be reported in account 5900, COLUMNS 4, 5, and 6.

ACCOUNT 5995 – RESTRICTED FUNDS FOR INDIGENT CARE

This account is the amount received from donors and government agencies to offset the cost of indigent care provided by the hospital. This account was formerly listed on worksheet C-2 as "RESTRICTED GRANTS AND DONATIONS FOR INDIGENT CARE". The amount reported herein represents an offset to total deductions from revenue.

ACCOUNT 4900 – RADIATION THERAPY REVENUE AND DEDUCTIONS

Enter the amount of radiation therapy revenue for both inpatient and outpatient services on line 20 in COLUMNS 1, 2, and total in COLUMN 3. The amount in COLUMN 3 SHOULD equal ACCOUNT 4360, COLUMN 3, line 44, on worksheet C-3. Enter radiation therapy deductions from revenue on line 20 in COLUMNS 4, 5, and 6. Subtract the amounts on line 20 in COLUMNS 4, 5, and 6 from those on line 20 in COLUMNS 1, 2, and 3 and enter the result on line 20 in COLUMNS 7, 8, AND 9.

ACCOUNT C035 – ADJUSTED REVENUE AND DEDUCTIONS

Subtract the amounts on LINE 20 from those on LINE 19 and enter the result on LINE 21.

This represents the adjustment for radiation therapy net revenues from total net revenues.

ACCOUNT C004 – TOTAL HMO/PPO PAYMENTS

Enter the amount of HMO/PPO payment for inpatient and outpatient services on COLUMNS 7 and 8, then sum the two figures and enter the total in COLUMN 9.

DISPROPORTIONATE SHARE PAYMENTS:

Disproportionate share payments made to hospitals are considered to be a reduction of the contractual allowance for that service. Disproportionate share payments for **MEDICARE** patients should be subtracted from the deductions from revenue reported on LINE 05 (Account 5910), COLUMN 4 for inpatient and in COLUMN 5 for outpatients. Disproportionate share payments for **MEDICAID** patients should be subtracted from the deductions from revenue reported on LINE 06 (Account 5920), COLUMN 4 for inpatient and in COLUMN 5 for outpatients. Disproportionate share payments are to be apportioned to inpatient and outpatient services in proportion to the percentage of gross revenue generated by that segment of service.

**EXAMPLE:** If the MEDICARE disproportionate share payment is \$100,000 and MEDICARE gross revenue is 78% inpatient and 22% outpatient, then the amounts subtracted from MEDICARE deductions from revenue would be \$78,000 from inpatient and \$22,000 from outpatient.

ADD CHART

~~WORKSHEET C 3a — STATEMENT OF PATIENT CARE SERVICES REVENUE BY PAYOR CLASS~~~~PURPOSE: This worksheet summarizes inpatient and outpatient revenue by payor class for all Patient Care Services.~~~~INSTRUCTIONS:~~~~HCCB (AHCA) HOSPITAL NO.: Enter the hospital's assigned HCCB (AHCA) number.~~~~PERIOD: Enter the beginning and ending date for the period covered in this report. For example: 10/01/1999-9/30/2000.~~~~COLUMN DEFINITIONS:~~~~NOTE: The amounts to be reported for each Payor class listed are the gross revenues (charges) regardless of the method used to charge for that service.~~~~ACCOUNT NUMBER~~~~The HCCB (AHCA) standardized account number assigned to this revenue category.~~~~NOTE: Account numbers are standardized for data processing purposes. No changes or substitutions can be made to these account numbers.~~~~COLUMN 1 — INPATIENT REVENUE~~~~Enter the inpatient revenue amount associated with those services provided during the reporting period. Those revenue classifications in which outpatient revenue is difficult to capture, total patient charges should be reported in COLUMN 1 and in COLUMN 3, ignoring COLUMN 2.~~~~COLUMN 2 — OUTPATIENT REVENUE~~~~Enter the outpatient revenue associated with those services provided during the report period.~~~~COLUMN 3 — TOTAL PATIENT SERVICE REVENUE~~~~Enter the summation of COLUMN 1 and COLUMN 2.~~~~The total reported in COLUMN 3, Account COO3, must equal the revenue reported on LINE 54, COLUMN 3 on WORKSHEET C 3.~~~~COLUMN 4 — REVENUE DEDUCTIONS~~~~Amounts reported in this column represent the total revenue deduction for the indicated account. The total of this column will be reported on WORKSHEET C 2, Line 4.~~~~ACCOUNT 5980 — ADMINISTRATIVE, COURTESY, AND POLICY DISCOUNT CARE~~~~This account is used to report the discounting by the hospital of care provided to members of its Governing Board, staff physicians and their families, and members of the clergy. These discounts may range from 10% to 100% of the hospital's bill. If the hospital discounts 100% of the bill, the gross charges should be reported in COLUMN 3, ACCOUNT 5905 and a deduction equal to those charges should be reported on COLUMN 4, ACCOUNT 5980. If the hospital discounts only a portion of the bill, the gross charges must be reported in the primary classification, e.g., commercial insurance, self pay, etc., and the amount discounted should be reported in account 5980, COLUMN 4.~~~~ACCOUNT 5981 — EMPLOYEE DISCOUNTED CARE~~~~Discounts for employees will generally be a secondary deduction of the commercial insurance classification. The hospital's discount portion will be reported in account 5981. However, the uncollectible amounts of employee deductibles and coinsurance should be reported in account 5900.~~~~ACCOUNT 5995 — RESTRICTED FUNDS FOR INDIGENT CARE~~~~This account represents "RESTRICTED GRANTS AND DONATIONS FOR INDIGENT CARE", which formerly appeared on WORKSHEET C 2. The amount in COLUMN 4 should be subtracted from total deductions.~~~~Interim and budget reference lines deleted.~~~~8/89~~~~2.45 and 2.46~~

ADD CHART

NAME OF PERSON ORIGINATING PROPOSED RULE:  
 Christopher J. Augsburg, Regulatory Analyst Supervisor  
 NAME OF SUPERVISOR OR PERSON WHO APPROVED  
 THE PROPOSED RULE: Jeffrey N. Gregg, Bureau Chief,  
 Health Facility Regulation  
 DATE PROPOSED RULE APPROVED BY AGENCY  
 HEAD: December 20, 2002  
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
 PUBLISHED IN FAW: August 4, 2000

**AGENCY FOR HEALTH CARE ADMINISTRATION  
 Medicaid**

RULE CHAPTER TITLE: RULE CHAPTER NO.:  
 Florida 211 Provider Certification 59G-11  
 Requirements 59G-11  
 RULE TITLES: RULE NOS.:  
 Purpose 59G-11.001  
 Definitions 59G-11.002  
 Agency Certification Process  
 and Requirements 59G-11.003  
 Revocation of a 211 Number 59G-11.004

PURPOSE AND EFFECT: The purpose of this rule is to provide a framework by which the Agency will administer subsections (1) and (2) of Section 408.918, Florida Statutes, Florida 211 Network: Uniform Certification Requirements.

SUMMARY: This rule enables the Agency to establish a certification process and develop criteria to certify information and referral entities as Florida 211 Network Providers.

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

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

SPECIFIC AUTHORITY: 408.918 FS.

LAW IMPLEMENTED: 408.918 FS.

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

TIME AND DATE: 9:00 a.m., Monday, January 27, 2003

PLACE: Agency for Health Care Administration, Conference Room C, Building 3, 2727 Mahan Drive, Tallahassee, FL 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Debby Walters, Bureau of Medicaid Research, 2727 Mahan Drive, MS 48, Tallahassee, Florida 32317-2600, (850)922-5532

THE FULL TEXT OF THE PROPOSED RULES IS:

59G-11.001 Purpose.

The purpose of this rule is to develop certification criteria for entities to become certified by the Agency as Florida 211 Network Providers as directed in Subsection (2) of Section 408.918, Florida Statutes.

Specific Authority 408.918 FS. Law Implemented 408.918 FS. History--New

59G-11.002 Definitions.

The following definitions are applicable to Chapter 59G-11, F.A.C.

1. "Agency" means the Agency for Health Care Administration.

2. "Agency 211 Certification Process" means the application of criteria established by the Agency for certification of a 211 provider in the Florida 211 Network.

3. "211" means a three-digit dialing code assigned by the Federal Communications Commission (FCC) to be used for community information and referral purposes.

4. "Florida 211 Network Provider" means an information and referral organization whose primary purpose is to maintain information about human service resources in the community, supply descriptive information about the agencies or organizations that offer services, and assist consumers in accessing appropriate providers.

5. "Alliance of Information and Referral Systems" or "AIRS" means a non-profit, as defined by Section 501(c)(3) of the federal tax code, professional membership organization for information and referral providers.

6. "Alliance of Information and Referral Systems accreditation" or "AIRS accreditation" means a process by which the Alliance of Information and Referral Systems determines whether information and referral programs are in compliance with the standards in Standards for Professional Information and Referral, 4th edition, revised October, 2002.

7. "Alliance of Information and Referral Systems certification" or "AIRS certification" means the awarding of professional credentials to individuals who successfully complete the Alliance of Information and Referral Systems certification program.

8. "AIRS/INFO LINE Taxonomy of Human Services" means the national standardized service classification system used to facilitate retrieval of community resource information, increase the reliability of planning data, make evaluation processes consistent and reliable, and facilitate national comparisons of data.

9. "Candidate" means an organization that requests to be certified by the Agency to become a Florida 211 Network Provider in the Florida 211 Network.

10. “Client information” means any information that can be used to identify a specific individual to whom services are being provided.

11. “Donation management” means assisting individuals or agencies to make financial or in-kind contributions to community organizations.

12. “Florida 211 Network” means the system of 211 providers certified by the Agency that provide 211 services throughout the state.

13. “Information and Referral Services” mean programs whose primary purpose is to maintain information about human service resources in the community, to link people who need assistance with appropriate service providers, and to supply descriptive information about the agencies or organizations that offer services.

14. “Provisional certification” means the temporary certification granted by the Agency to a Florida 211 Network Provider that loses AIRS accreditation.

15. “Standards for Professional Information and Referral, 4th edition, revised October, 2002” means the document published by the Alliance of Information and Referral Systems that defines the national standards for information and referral programs and systems.

16. “Volunteer Management” means assisting individuals or organizations to provide volunteer services to the community.

Specific Authority 408.918 FS. Law Implemented 408.918 FS. History—New

#### 59G-11.003 Agency Certification Process and Requirements.

(1) The Agency shall certify a single Florida 211 Network Provider for each county. This shall not preclude the Florida 211 Network Provider from serving multiple counties. To ensure the maximum use of the 211 number for information and referral services, the certified Florida 211 Network Provider shall be required to coordinate with all other information and referral services and the telecommunications companies within the designated county or counties. If the Agency receives more than one application for Florida 211 Network Provider certification from organizations representing the same county, the Agency will notify the organizations by certified mail that the Agency shall only accept one collaborative designation application per county.

(2) In order to become a Florida 211 Network Provider candidates shall submit to the Agency a Florida 211 Network Provider Certification Application Form 5700-0001 dated September 2002, which is incorporated herein by reference. Candidates shall also provide the Agency with written documentation verifying that the organization meets the following criteria:

a. Provides 24-hour coverage, 7 days a week either on-site or through written arrangements with other organizations for after hours coverage, that shall be provided by personnel monitoring the 211 phone line and shall not be answered through an answering service or answering machine;

b. Adheres to the Alliance of Information and Referral Systems, Incorporated *Standards for Professional Information and Referral*, 4th edition, revised October, 2002, which is incorporated herein by reference, and is AIRS accredited, or has initiated the written application process and shall become accredited within three years;

c. Has 25 percent or more of eligible staff with AIRS certification as information and referral specialists or resource specialists;

d. Works collaboratively and has written agreements with specialized information and referral systems which shall include crisis centers, child care resource and referral programs, elder help-lines, homeless coalitions, designated emergency management systems, and 911 and 311 systems, where applicable;

e. Has an established automated information tracking system that maintains call center data that shall include call volume, number of abandoned calls, average speed of answering, average call length and other appropriate call center statistics;

f. Maintains a computerized information and referral system database that has up-to-date information and resource data and the capacity to collect caller information;

g. Uses the Alliance of Information and Referral Systems and AIRS/INFO LINE Taxonomy and has incorporated the taxonomy into its resource data base;

h. Publicizes 211 services through a written public awareness, marketing, advertising and education plan to inform the public regarding available services;

i. Provides teletyping (TTY) services for speech and hearing impaired individuals and multi-lingual accessibility either on-site, or through access to translators;

j. Has formal agreements with appropriate clearinghouse agencies that provide volunteer or donation management services;

k. Ensures quality of service and caller and customer satisfaction through appropriate follow-up and written outcome evaluations;

l. Shares resource database information with other Florida 211 Network Providers;

m. Tracks information on inquirer needs, unmet needs, and barriers to services and shares this data with other Florida 211 Network Providers, and local and state organizations;

n. Uses a method common to all Florida 211 Network Providers to measure and evaluate outcomes for the operation of a 211 call center;

o. Submits to the Agency an annual report documenting the information and referral services provided. The annual report shall include geographical areas served, call volume, number of abandoned calls, average speed of answering, average call length, information on inquirer needs, unmet needs, and barriers to services. This report shall cover the previous year's activities and shall follow the state's fiscal year from July 1st through June 30th. The report shall be due to the Division of Medicaid in the Agency on or before August 1st of each year; and

p. Adheres to the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPPA).

(3) Candidates with AIRS accreditation that submit a Florida 211 Network Provider Certification Application Form 5700-0001 dated September 2002, with accompanying written documentation that verifies compliance with the Agency's certification criteria shall be certified for three years as a Florida 211 Network Provider.

(4) Candidates that have applied for, but have not yet received AIRS accreditation and that submit a Florida 211 Network Provider Certification Application Form 5700-0001 dated September 2002, with accompanying written documentation that verifies compliance with the Agency's certification criteria, shall be certified by the Agency for one year as a Florida 211 Network Provider. Prior to certifying a candidate who does not have AIRS accreditation, the Agency shall conduct an on-site visit to review the candidate's compliance with the Agency's certification criteria.

(5) Within 45 days of the receipt of the initial Florida 211 Network Provider Certification Application Form 5700-0001 dated September 2002, the Agency shall notify a candidate of whether the candidate is in compliance with the Agency's certification requirements. Such notification shall include a statement of deficiencies for candidates that are determined not in compliance with the certification requirements. Candidates determined by the Agency to not be in compliance with the certification requirements, shall submit a plan of correction to the Agency within 21 calendar days of receipt of the statement of deficiencies. The plan of correction shall include a list of corrective actions the candidate will take to remedy identified deficiencies and shall include the date by which each action shall be completed. Plans of correction shall be reviewed by the Agency for approval. The Agency shall notify candidates by certified mail of whether their plan of corrections has been approved. Candidates shall conform to the certification criteria within 45 days of receipt of the Agency's notification of approval of the plan of correction, or shall be ineligible for certification by the Agency. Candidates that fail to submit and adhere to an approved plan of correction shall not be certified by the Agency as a Florida 211 Network Provider. Candidates shall be eligible to re-apply for Agency certification after one year from the date of notification by the Agency.

(6) If a Florida 211 Network Provider loses AIRS accreditation, yet is in compliance with the Agency's certification criteria, the provider shall be granted a one-year provisional certification by the Agency as a Florida 211 Network Provider, if after consulting with AIRS it is deemed that the provider is eligible to reapply for re-accreditation. The Agency shall notify the provider by certified mail that it has one year from the date of loss of accreditation by AIRS to obtain re-accreditation. Within 45 days of notification, the provider shall submit to the Agency for approval a plan to secure AIRS accreditation within the provisional timeframe.

(7) If the Agency determines that a Florida 211 Network Provider is not in compliance with the Agency's certification criteria, the provider shall be notified by certified mail that it shall conform to the standards within 45 calendar days of receipt of the certified letter or lose certification by the Agency.

(8) If the Agency receives a written complaint that a Florida 211 Network Provider is in violation of the Agency's certification criteria, the Agency shall initiate an investigation of the complaint within 21 calendar days of notification.

(9) The Agency shall renew a Florida 211 Network Provider's certification which has AIRS accreditation for an additional 3 years, if the provider submits a new Florida 211 Network Provider Certification Application Form 5700-0001 dated September 2002, with accompanying written documentation that verifies compliance with the Agency's certification criteria 60 days prior to the termination of the certification.

(10) The Agency shall renew the certification of a Florida 211 Network Provider which does not have AIRS accreditation, if the provider submits the following by at least 60 calendar days prior to the termination of the certification period: a new 211 Florida Network Provider Certification Application Form 5700-0001 dated September 2002; written documentation that verifies compliance with the remainder of the Agency's certification criteria; and a written plan of how the provider intends to obtain AIRS accreditation. Prior to re-certifying a provider who does not have AIRS accreditation, the Agency shall conduct an on-site visit to review the provider's compliance with the Agency's certification criteria. The Agency shall renew certification for 1 year for a provider that does not have AIRS accreditation if the Agency finds that the provider is in compliance with the certification criteria subsequent to an on-site visit. Subsequent to the on-site visit the Agency shall notify a provider by certified mail if it is in violation of the Agency's certification criteria. The provider shall have 45 days from receipt of the notification to become compliant. Providers who become compliant with the certification criteria within 45 days shall be granted an additional year of certification.

(11) Dispute resolution. Any dispute related to the Agency's certification of a Florida 211 Network Provider shall be resolved through a Chapter 120 administrative hearing.

Specific Authority 408.918 FS. Law Implemented 408.918 FS. History--New

59G-11.004 Revocation of a 211 Number.

The Agency shall request the Federal Communications Commission to direct the local exchange company to revoke the use of the 211 dialing code from any entity that leases a 211 number from a local exchange company but is not certified by the Agency. Prior to requesting revocation by the Federal Communications Commission and the local exchange company, the Agency shall notify the entity leasing the 211 number by certified mail that it has 30 days from receipt of the notification to submit the Florida 211 Network Provider Certification Application Form 5700-0001 dated September 2002, and accompanying documentation. If the entity leasing the 211 number fails either to submit, a completed application and certification form within 30 days of receipt of the certified letter, or become certified by the Agency, the Agency shall, after consultation with the local exchange company and the Public Service Commission, request that the Federal Communications Commission direct the local exchange company to revoke use of the 211 number.

Specific Authority 408.918 FS. Law Implemented 408.918 FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Debby Walters

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Rhonda M. Medows, M.D., FAAFP, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 11, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 5, 2002

**DEPARTMENT OF MANAGEMENT SERVICES**

**Division of Administrative Hearings**

RULE CHAPTER TITLE: RULE CHAPTER NO.:

Rules of Procedure for Workers' Compensation Adjudications 60Q-6

RULE TITLES: RULE NOS.:

Scope 60Q-6.101

Definitions 60Q-6.102

Pleadings and Proposed Orders 60Q-6.103

Representation and Appearance of Counsel 60Q-6.104

Commencing a Case; Subsequent Petitions 60Q-6.105

Consolidation and Venue 60Q-6.106

Amendment and Dismissal of

Petition for Benefits 60Q-6.107

Filing and Service 60Q-6.108

Computation of Time 60Q-6.109

Mediation, Generally	60Q-6.110
Authority and Duties of Mediator	60Q-6.111
Disqualification of Mediator	60Q-6.112
Pretrial Procedure	60Q-6.113
Discovery	60Q-6.114
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Summary Final Order	60Q-6.120
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Motion for Re-hearing	60Q-6.122
Settlements under Section 440.20(11), Florida Statutes	60Q-6.123
Payment of Attorney's Fees and Costs Other Than Pursuant to Section 440.20(11), Florida Statutes	60Q-6.124
Sanctions	60Q-6.125
Disqualification or Recusal of Judges	60Q-6.126

**PURPOSE AND EFFECT:** The rules implement the mandate in Section 440.45, Florida Statutes, that the Division of Administrative Hearings adopt procedural rules for workers' compensation claims resolution. They are patterned after the existing procedural rules adopted by the Supreme Court of Florida, but will eliminate unnecessary procedural requirements in those rules in an effect to simplify the process and effectuate the legislative intent in Sections 440.015 and 440.44(2), Florida Statutes, that the workers' compensation system be efficient and self-executing and that the Division of Administrative Hearings assume an active and forceful role in the administration of Chapter 440, F.S. Upon adoption, the rules replace the procedural rules adopted by the Supreme Court of Florida.

**SUMMARY:** These rules replace current workers' compensation procedures before judges of compensation claims as to the filing of pleadings, motion hearings, proposed orders, expedited processes, pretrial procedures, and final hearings in order to simplify the process to make it more efficient.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST:** No Statement of Estimated Regulatory Cost was prepared.

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

**SPECIFIC AUTHORITY:** 440.25(4)(h),(i), 440.45(1)(a),(4) FS.

**LAW IMPLEMENTED:** 440.192, 440.20(11), 440.25, 440.29, 440.30, 440.32, 440.33, 440.42, 440.45 FS.

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



TIME AND DATE: 1:00 p.m., Tuesday, January 14, 2003

PLACE: DeSoto Building (check the bulletin board in the lobby for room assignment), 1230 Apalachee Parkway, Tallahassee, FL 32399

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in the hearing is requested to contact the person listed below at least five calendar days before the hearing. Hearing or speech-impaired persons may contact the person listed below by using the Florida Relay Service, which can be reached at 1(800)955-8700 (voice) and 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Administrative Law Judge Linda M. Rigot, Division of Administrative Hearings, 1230 Apalachee Parkway, Tallahassee, Florida 32399, (850)488-9675

THE FULL TEXT OF THE PROPOSED RULES IS:

RULES OF PROCEDURE FOR WORKERS' COMPENSATION ADJUDICATIONS

60Q-6.101 Scope.

These rules of procedure apply in all workers' compensation proceedings before the judges of compensation claims and replace workers' compensation rules of procedure 4.010 through 4.900 and all forms referenced therein.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.45(1)(a),(4) FS. History--New

60Q-6.102 Definitions.

(1) "Claim" means each assertion of a legal right or benefit under Chapter 440, Florida Statutes.

(2) "Claimant" means the person asserting a claim.

(3) "Division" means the Division of Workers' Compensation, Department of Insurance.

(4) "Office of the Judges of Compensation Claims" (OJCC) is the office within the Department of Management Services, Division of Administrative Hearings, where the deputy chief judge and judges of compensation claims preside.

(5) "Electronic transmission" means transmitted through a link on the OJCC website identified for that purpose.

(6) "Filed" means received by the clerk of the Office of the Judges of Compensation Claims in Tallahassee or by the judge as provided in subsection 60Q-6.108(1), F.A.C.

(7) "Judge" means a judge of compensation claims appointed pursuant to Chapter 440, Florida Statutes.

(8) "Parties" may include the petitioner, claimant, employer, carrier, servicing agent, health care provider, and division.

(9) "Petition for benefits" means a pleading invoking the jurisdiction of the OJCC and subject to the requirements of Sections 440.192(1)-(4), Florida Statutes.

(10) "Pleading" means any document seeking relief under Chapter 440, Florida Statutes.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.192(1), 440.45(1)(a),(4) FS. History--New

60Q-6.103 Pleadings and Proposed Orders.

(1) Pleadings. All documents filed with the OJCC or with the judge shall:

(a) Be typewritten or printed on 8 1/2" by 11" unfolded white paper, unless filed by electronic transmission;

(b) Be unstapled;

(c) Contain the signature, or the electronic equivalent of the signature if filed electronically, of the party in interest or, if represented, the party's attorney of record;

(d) Contain the style of the proceeding; the case number, if any; the date of accident; the name of the party on whose behalf the document is filed; the subject matter of the document; and the name, mailing address, and telephone number of the party or, if represented, the party's attorney of record (including the attorney's Florida Bar number) filing the document; and

(e) Contain a certificate of service representing that copies have been served on all parties or, if represented, their attorneys of record.

(2) All pleadings filed in paper form shall contain in the bottom 1 1/2 inches of each page only the following: "OJCC Case #" followed by the case number, "Bar #" followed by The Florida Bar number of the attorney or the word "none" if the party is not represented, "pleading #" followed by the title of the pleading, "page #" followed by page number, and "of #" followed by the number of pages of the pleading.

(3) Proposed Orders. Except as provided in subsection 60Q-6.115(3), F.A.C., proposed orders shall not be submitted unless requested by the judge, and shall be accompanied by pre-addressed, postage-paid envelopes. They shall be clearly identified as proposed orders and shall be sent to all other parties or, if represented, their attorneys of record prior to being submitted to the judge. Proposed orders shall be a separate document and not be included as a part of the request for the order. Proposed orders shall not be filed.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.192(1), 440.45(1)(a),(4) FS. History--New

60Q-6.104 Representation and Appearance of Counsel.

(1) Appearance of Counsel. An attorney who files a petition or claim on behalf of a party has entered an appearance and shall be deemed the party's attorney of record. All other attorneys appearing for a party in an existing case shall file promptly with the OJCC and the judge a notice of appearance and serve copies on all other parties or, if represented, their attorneys of record. The notice of appearance shall include the style of the proceeding; the case number; the name of the party

on whose behalf the attorney is appearing; and the name, mailing address, telephone number, and Florida Bar number of the attorney.

(2) Substitution or Withdrawal of Counsel. An attorney of record remains the attorney of record until either.

(a) A stipulation for substitution has been filed with the OJCC and the judge and served on all other parties or, if represented, their attorneys of record; or

(b) A motion to substitute or to withdraw, which reflects that it has been served on the client and all other parties or, if represented, their attorneys of record, is granted.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.45(1)(a),(4) FS. History–New

60Q-6.105 Commencing a Case; Subsequent Petitions.

(1) A party commences a new case by filing a petition for benefits pursuant to Section 440.192, Florida Statutes, when there is not an existing case pertaining to the same claimant and date of accident.

(2) When the claimant and date of accident are the same as in an existing case, any subsequent petition for benefits or claim relating to that claimant and date of accident shall be filed in the existing case.

(3) For any claim within the jurisdiction of the OJCC but not subject to a petition for benefits, the claimant shall file with the clerk of the OJCC the pleading setting forth the claim together with a request for assignment of case number.

(4) All petitions, whether initial or subsequent, shall contain all known claims which are ripe, due, and owing on the date the petition is filed.

(5) A claim for reimbursement from the Special Disability Trust Fund shall be made under the administrative rules promulgated by the division.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.192, 440.45(1)(a),(4) FS. History–New

60Q-6.106 Consolidation and Venue.

(1) The judge, on the judge’s own initiative or on the motion of any party, may consolidate any claims or petitions, except for a claim for reimbursement from the Special Disability Trust Fund, with any pending petition for the purpose of a hearing or for any other purpose.

(2) Any motion to consolidate cases belonging in the same venue shall be filed in only the lowest-numbered case sought to be consolidated and shall be resolved by the judge to whom that case is assigned.

(3) Any motion to consolidate cases belonging in different venues shall be filed in the case assigned to the judge being asked to transfer the case to the other venue and shall contain the signatures of all parties, or, if represented, their attorneys of record.

(4) A motion to change venue shall be filed with the judge and shall contain the signatures of all parties, or, if represented, their attorneys of record.

(5) When a judge assigned to a case determines that the case is proceeding in an incorrect venue, the judge may transfer the case to the proper venue.

(6) For accidents occurring outside of the state, the deputy chief judge’s initial determination of venue may be changed by order of the assigned judge.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.25(4)(d), 440.45(1)(a),(4) FS. History–New

60Q-6.107 Amendment and Dismissal of Petition for Benefits.

(1) A petition that does not contain the information required by Section 440.192(2)-(4), Florida Statutes, shall be dismissed.

(2) A petition may only be amended by stipulation of the parties or by order of the judge.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.192, 440.45(1)(a),(4) FS. History–New

60Q-6.108 Filing and Service.

(1) Filing.

(a) All petitions, amended petitions, requests for assignment of case number and initial pleadings relating thereto, and other documents identified by the deputy chief judge by order shall be filed with the OJCC. Except as otherwise provided in these rules, all motions, notices, pleadings, or other documents shall be filed only with the judge.

(b) Any pleading or other paper filed in a proceeding shall be served on all other parties or, if represented, their attorneys of record at the time the document is filed.

(c) Filing by electronic transmission is complete when the filing party receives an electronic acknowledgement of receipt.

(d) The following documents shall not be filed with the OJCC or with the judge unless relevant to an issue to be heard: requests or notices to produce and objections or responses thereto, deposition transcripts, correspondence between counsel or parties, subpoenas and returns of service.

(e) Facsimile or other electronic transmission of documents to the judge shall be used only when the judge authorizes such use for that document; otherwise, the document will not be considered.

(f) Any document received by the OJCC or the judge after 5:00 p.m. shall be deemed filed as of 8:00 a.m. on the next regular business day.

(2) Service. Service is effectuated by:

(a) Handing it to the party or, if represented, the party’s attorney of record;

(b) Leaving it at the attorney’s office with a clerk or other person in charge or leaving it in a conspicuous place in the office;

(c) If the office is closed or the person to be served has no office, leaving it at the person's residence with a member of the person's family above 15 years of age and informing that person of the contents:

(d) Placing it in the United States mail; or

(e) Transmitting it by facsimile or by electronic transmission.

(3) Service by delivery, by facsimile transmission, or by electronic transmission after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday, or legal holiday.

(4) When service is made by mail, the copy shall be mailed by United States mail, postage prepaid, to the last known address of the party or, if represented, the party's attorney of record.

(5) Service by mail shall be complete upon mailing.

(6) When service of any pleading other than a petition is made by mail, 5 days shall be added to the time allowed for the performance of any act required to be done, or allowed to be done, within a certain time after service.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.192, 440.45(1)(a),(4) FS. History—New

#### 60Q-6.109 Computation of Time.

In computing any period of time prescribed or allowed by these rules, by order, or by applicable statute, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included. If any act required to be done, or allowed to be done, falls on a Saturday, Sunday, or legal holiday, performance of that act shall be required on the next regular working day. When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation. As used in this rule, legal holiday means those days designated in Section 110.117, Florida Statutes.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.45(1)(a),(4) FS. History—New

#### 60Q-6.110 Mediation, Generally.

(1) All petitions and claims pending at the time a mediation conference is held will be mediated at that conference unless the judge orders otherwise.

(2) After state mediation has been scheduled, parties who have agreed to private mediation shall file with the judge at least 30 days prior to the scheduled state mediation conference a notice substituting private mediation for state mediation. The notice shall include the name of the private mediator, along with the date and time of the state and private mediations.

(3) The parties and private mediator shall be bound by the rules and statutes applicable to state mediation. If a notice and order regarding state mediation has been entered in the cause, the terms and requirements of the notice and order shall remain in full force and effect as to the substituted private mediation.

(4) If the parties settle all issues, or all issues except for attorney's fees, prior to the scheduled mediation conference, they shall immediately notify the mediator and the judge in writing.

(5) The following persons shall attend the mediation conference: the claimant; the claims representative of the carrier/servicing agent, which representative must have full authority to settle the issues; the employer, if uninsured; the insured or self-insured employer, if the employer/servicing agent does not have full authority to settle the issues; and the attorneys for the parties. The appearance of an attorney for a party does not dispense with the required attendance of the party. No one may appear at the mediation conference by telephone unless such appearance is approved in advance by the mediator.

(6) Failure to attend the mediation conference without having shown good cause or failure to appear at the mediation conference with full authority to resolve the issues may subject the party or the attorney to sanctions.

(7) Immediately following the conclusion of the mediation conference, the mediator, whether state, adjunct, or private, shall prepare a report stating whether any of the issues in dispute are resolved and whether the parties completed a pretrial stipulation. The claimant shall file with the judge within five days the mediator's report, together with any pretrial stipulation executed by the parties. If the parties reached a settlement agreement, it shall be filed with the judge for approval only if the judge's approval is required by statute.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.25(1)-(4), 440.45(1)(a),(4) FS. History—New

#### 60Q-6.111 Authority and Duties of Mediator.

##### (1) Authority of Mediator.

(a) The mediator shall at all times be in control of the mediation and the procedures to be followed, subject to the direction of the judge.

(b) The mediator may meet and consult privately with any party or parties or their counsel during the mediation.

(c) The mediator shall have discretion to allow any party to appear at the mediation conference by telephone.

(2) Duties of Mediator. The mediator shall inform the parties at the beginning of the mediation conference:

(a) Of the process of mediation;

(b) That the mediator is an impartial facilitator and is there to assist the parties in reaching, not to force them to reach, a voluntary settlement;

(c) Of the differences between mediation and a final hearing before the presiding judge;

(d) If applicable, of the costs of the mediation;

(e) That the mediation process is consensual in nature, and the parties retain their right to a final hearing if they do not reach agreement;

(f) Of the privileged and confidential nature of communications made during the mediation;

(g) That any agreement reached at the mediation conference will be by mutual consent of the parties, reduced to writing, and subject to the approval of the presiding judge if required by statute; and

(h) That the mediator will timely determine when mediation should end.

(3) Disclosure. The mediator has a duty to be impartial and to advise all parties of any circumstances bearing on possible bias, prejudice, or partiality.

(4) Matters Beyond Mediator’s Competence. A mediator shall decline appointment or withdraw when the mediator decides that a matter is beyond the mediator’s competence.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.25(1)-(4), 440.45(1)(a),(4) FS. History–New \_\_\_\_\_.

60Q-6.112 Disqualification of Mediator.

Any party may, by motion, for good cause shown, request the judge to disqualify a mediator. The request must state with particularity the basis for disqualification. Any order disqualifying a mediator shall name a substitute mediator. Nothing in this rule shall preclude mediators from disqualifying themselves or refusing any assignment.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.45(1)(a),(4) FS. History–New \_\_\_\_\_.

60Q-6.113 Pretrial Procedure.

(1) A judge, on the judge’s own initiative or on the motion of any party, may conduct status conferences or pre-hearing conferences.

(2) At any pretrial conference necessitated by the failure of the parties to complete a pretrial stipulation at the mediation conference, the parties shall:

(a) State and simplify the issues;

(b) Stipulate to such facts and documents as will avoid unnecessary proof;

(c) Examine and mark all exhibits (except for impeachment and rebuttal exhibits) for identification;

(d) Furnish the opposing party with the names and addresses of all witnesses (except for impeachment and rebuttal witnesses), identifying those who will testify by telephone;

(e) Exchange all available written reports of experts to be offered at trial; and

(f) Consider and determine such other matters as may aid in the disposition of the case.

(3) Where mediation has been waived by the deputy chief judge, the parties shall file a pretrial stipulation that conforms to the requirements of subsection (2) of this Rule no later than 30 days before the final hearing.

(4) Witness lists, exhibit lists, supplements, and amendments served less than 30 days before the final hearing must be approved by the judge or stipulated to by the parties.

(5) The judge shall record the pretrial hearing by stenographic or electronic means at the request of any party.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.25(2)-(4), 440.29(2), 440.33(1), 440.45(1)(a),(4) FS. History–New \_\_\_\_\_.

60Q-6.114 Discovery.

(1) Depositions.

(a) Depositions of witnesses or parties may be taken and used in the same manner and for the same purposes as provided in the Florida Rules of Civil Procedure.

(b) Approval of the judge is not necessary to take a deposition by telephone. If a deposition is taken by telephone, the oath shall be administered in the physical presence of the witness by a notary public or other person authorized by law to administer oaths, unless the physical presence is waived by all the parties.

(2) Production and entry on land. Any party may seek production of documents or other tangible things from other parties or non-parties and may seek entry onto land or other property as provided in the Florida Rules of Civil Procedure.

(3) Responses and objections to depositions, production, or entry shall be made as provided in the Florida Rules of Civil Procedure.

(4) Surveillance. Any evidence in the nature of surveillance is subject to discovery when it will be used at the final hearing provided the party intending to use the evidence is first given a reasonable opportunity to depose the party or witness who is the subject of the surveillance.

(5) The judge may enter orders to effectuate discovery, including orders compelling discovery, protective orders, and orders imposing sanctions for failure to comply with or for using discovery methods not specifically authorized by statute. For good cause shown, the judge may enlarge or shorten applicable timeframes for complying with discovery.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.30, 440.33(1), 440.45(1)(a),(4) FS. History–New \_\_\_\_\_.

60Q-6.115 Motion Practice.

(1) All motions shall be in writing unless made on the record during a hearing and shall fully state the relief requested and the grounds relied upon.

(2) Prior to filing any motion, the movant shall personally confer with the opposing party or parties or, if represented, their attorneys of record to attempt to amicably resolve the subject matter of the motion. All motions shall include a statement that the movant has personally conferred or has used good-faith efforts to confer with all other parties or, if represented, their attorneys of record and shall state whether any party has an objection to the motion.

(3) If the motion cannot be amicably resolved, does not require the taking of evidence, and does not require more than ten minutes to argue, the movant shall notice the motion to be heard on the judge's motion calendar. The movant shall coordinate the motion hearing with the other parties or, if represented, their attorneys of record but not with the judge's office. The motion shall be served at that time; however, the motion shall not be filed with the judge until three days before the motion calendar on which it has been set. No written response to the motion is necessary. The movant shall bring to the motion calendar a proposed order, which allows the judge to mark that the motion is granted or denied, together with stamped envelopes for mailing the order to the parties.

(4) For other motions which have not been amicably resolved, the movant shall file the motion, which shall include a statement as to whether a hearing on the motion is necessary and, if so, the basis for requesting a hearing. The other parties may, within seven days of service of the written motion, file a response in opposition, which shall include a statement as to whether a hearing on the motion is necessary and, if so, the basis for requesting a hearing. Unless the judge determines that a hearing is necessary based upon the statements in the motion and/or response as to why a hearing is necessary, written motions will normally be disposed of without a hearing. Motion hearings may be conducted either in person or telephonically as the judge deems necessary.

(5) Motions for extension of time shall be filed prior to the expiration of the deadline sought to be extended and shall state good cause for the request.

(6) Motions to expedite discovery or the final hearing shall set forth good cause and shall be served by facsimile transmission, hand delivery, or overnight delivery. Any opposition to the motion must be filed within four days from the date of the motion.

Specific Authority 440.25(4)(h), 440.45(1)(a),(4) FS. Law Implemented 440.25(4)(h), 440.45 (1)(a),(4) FS. History–New

#### 60Q-6.116 Prosecution of Claim and Petition for Benefits.

(1) A request for a continuance shall be made by motion and shall specify the reason that the continuance is necessary.

(2) A claim or petition may be dismissed by the claimant or petitioner without an order by filing a notice of voluntary dismissal at any time before the conclusion of the final hearing. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a second notice of voluntary dismissal shall operate as an adjudication of denial of any claim or petition for benefits previously the subject of a voluntary dismissal.

(3) The judge may conduct any proceedings by telephone conference. Testimony may be taken by telephone with the agreement of all parties and approval by the judge.

(4) In the event that testimony is taken by telephone, the oath shall be administered in the physical presence of the witness by a notary public or officer authorized to administer oaths unless the physical presence of the notary public or officer is waived by the parties.

(5) Except as authorized by statute, the judge may enter an order reflecting the terms of any written stipulation or agreement between the parties only where one of the parties to the stipulation or agreement alleges that another party has failed or refused to comply with the stipulation or agreement and an order is necessary for immediate enforcement; otherwise, the parties shall not request that the judge approve a stipulation or agreement or reduce it to an order.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.25(4), 440.29(2), 440.33(1), 440.45(1)(a),(4) FS. History–New

#### 60Q-6.117 Emergency Conferences.

A written request for an emergency conference shall be filed with the judge and served on all other parties or, if represented, their attorneys of record. It shall set forth in detail the facts giving rise to the request, its legal basis, the factual or medical basis for the claim that there is a bona fide emergency involving the health, safety, or welfare of an employee, and the specific relief sought. Any documents relied upon should be specifically referenced and attached.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.25(4)(g), 440.45(1)(a),(4) FS. History–New

#### 60Q-6.118 Expedited Hearings.

(1) Scope. This rule applies in those cases required to be expedited pursuant to statute or agreement of the parties.

(2) Discovery. The parties shall have at least 30 days to conduct discovery, which shall be completed 15 days before the hearing. The parties shall respond to requests for production within 10 days.

(3) Stipulated Pretrial Outline. At least 15 days before the final hearing, a stipulated pretrial outline shall be filed and shall include the following:

(a) A concise statement of the nature of the controversy;

(b) A brief, general statement of each party's position;

(c) A list of all exhibits (except for impeachment and rebuttal exhibits) to be offered at the hearing, noting any objections thereto, and the grounds for each objection (no additional documentary evidence will be admitted at the hearing);

(d) A list of the names and addresses of all witnesses (except for impeachment and rebuttal witnesses) to be called at the hearing by each party, with expert witnesses being so designated, together with a summary of the expected testimony;

(e) A concise statement of those facts which are admitted and will require no proof at hearing, together with any reservations directed to any such admission; and

(f) A list of all pending motions or other matters which require action by the judge.

Specific Authority 440.25(4)(i), 440.45(1)(a),(4) FS. Law Implemented 440.25(4)(i), 440.45 (1)(a),(4) FS. History–New \_\_\_\_\_.

60Q-6.119 Abbreviated Final Orders.

In cases in which compensability is not disputed, any party may request within ten days from the date of an abbreviated final order that the abbreviated final order be vacated and that a final order containing separate findings of fact and conclusions of law be entered.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.25(4)(d), 440.45(1)(a),(4) FS. History–New \_\_\_\_\_.

60Q-6.120 Summary Final Order.

(1) The judge may enter a summary final order when such an order would be dispositive of the issues raised by the subject petition. Issues that would be dispositive are whether there is coverage, whether the statute of limitations has run, whether the accident or occupational disease is compensable, whether the claim is barred by res judicata or a prior settlement, whether the judge has jurisdiction over the subject matter, whether the benefit sought has been paid, and whether the alleged employee is an independent contractor.

(2) Any party may file a motion for a summary final order when there is no genuine issue as to any material fact and the granting of the motion would be dispositive of the issues raised by the subject petition. A summary final order shall be rendered if the judge determines from the pleadings and depositions, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order. No motion for summary final order may be filed less than 30 days prior to a scheduled final hearing.

(3) When a motion for summary final order is denied, the judge shall impose sanctions pursuant to subsections 60Q-6.125(4) and (5), F.A.C., if the judge determines that the motion violates subsection 60Q-6.125(1), F.A.C.

(4) The motion is deemed denied if the judge has not ruled upon the motion by the commencement of the final hearing.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.25(4)(h), 440.45(1)(a),(4) FS. History–New \_\_\_\_\_.

60Q-6.121 Evidence.

(1) Evidence which has been offered but ruled inadmissible may be proffered but shall be clearly identified as such by the judge.

(2) Legible copies may be substituted for original documents.

(3) Voluminous or cumbersome exhibits shall not be received in evidence unless their use is unavoidable.

(4) The judge may consider post-hearing evidence for good cause shown.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.45(1)(a),(4) FS. History–New \_\_\_\_\_.

60Q-6.122 Motion for Re-hearing.

(1) A motion for re-hearing shall state specifically the grounds on which it is based and should not be used to re-argue issues already determined. A motion for re-hearing shall be filed and served within 10 days from the date of the order sought to be reviewed.

(2) The motion shall be limited to the following reasons:

(a) To call attention to typographical or technical errors;

(b) To challenge rulings that were outside the scope of the issues presented; or

(c) To seek clarification in matters of law or fact that the judge may have overlooked or misapprehended.

(3) A motion for re-hearing does not toll the time within which an order becomes final or an appeal may be filed.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.45(1)(a),(4) FS. History–New \_\_\_\_\_.

60Q-6.123 Settlements Under Section 440.20(11), Florida Statutes.

(1) Settlements under Section 440.20(11)(a) or (b), F.S.

(a) When a joint petition signed by all parties is filed pursuant to Section 440.20(11)(a) or (b), F.S., it shall be accompanied by:

1. The settlement stipulation executed by all attorneys of record and the employee or claimant;

2. A copy of any prior joint petition and order if indemnity benefits were previously settled;

3. A summary or payout sheet indicating total indemnity and medical benefits previously paid, including impairment income benefits;

4. The employee’s current work status and other sources of income, social security disability, and, if any, monthly benefit amounts;

5. Documentation establishing overall physical maximum medical improvement and psychiatric maximum medical improvement, if either is applicable;

6. When an estimate of future medical needs is not included, a statement that the parties elect to settle without this information;

7. A status letter from the Department of Revenue or the Clerk of the Circuit Court, Central Depository, as to whether the claimant has an arrearage or owes past due support, and, if so, the amount thereof;

8. A letter from counsel stating that the carrier will issue a check in the amount of the arrearage and/or past due support or such other amount to be approved by the judge and that the check will be sent to the Department of Revenue or the Clerk of the Circuit Court, Central Depository;

9. Any other evidence in the possession of the parties and their attorneys that is material to the disposition of the settlement;

10. For settlements under Section 440.20(11)(a), F.S., the notice(s) of denial; and

11. For settlements under Section 440.20(11)(b), F.S., the required notice to the employer, a maximum medical improvement report, documentation of the permanent impairment rating, information concerning the need for future medical care, and other essential medical information.

(b) The date and description of all accidents/injuries included in the settlement must be specified.

(c) Language regarding a general release of all liability or claims shall not be included, and no such general release or separate releases shall be attached.

(d) For settlements under Section 440.20(11)(a), F.S., and when a hearing is deemed necessary by the judge for settlements under Section 440.20(11)(b), F.S., the attorney for the employer/carrier shall contact the judge to schedule a hearing date and shall promptly notify the claimant of the hearing date, time, and location.

(2) Settlements under Section 440.20(11)(c), (d), and (e), F.S.

(a) When a motion for approval of attorney's fees is filed pursuant to Section 440.20(11)(c), (d), or (e), F.S., it shall be accompanied by:

1. An attorney's fee data sheet setting forth sufficient information to justify the amount of the attorney's fee and setting forth the benefits obtained by the claimant's attorney, and an affidavit specifying the statutory factors forming the basis for the variance if the claimant's attorney seeks an attorney's fee in excess of the statutory percentage fee; and

2. A status letter from the Department of Revenue or the Clerk of the Circuit Court, Central Depository, as to whether the claimant has an arrearage or owes past due support and, if so, the amount thereof, and a letter from counsel stating that the carrier will issue a check in the amount of the arrearage and/or past due support or such other amount to be approved by the judge or that claimant's counsel will deposit the settlement proceeds in a trust account and will issue a check in the amount of the arrearage and/or past due support or such other amount to be approved by the judge and that the check will be sent to the Department of Revenue or the Clerk of the Circuit Court, Central Depository.

(b) No hearing shall be held except as deemed necessary by the judge.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.20(11), 440.45(1)(a),(4) FS. History-New

60Q-6.124 Payment of Attorney's Fees and Costs Other Than Pursuant to Section 440.20(11), Florida Statutes.

(1) Payment of Undisputed Attorney's Fees and Costs by Claimant. The claimant and his or her attorney may jointly move for the judge to approve the payment of an attorney's fee and reimbursement of costs. The motion shall include a statement that claimant's counsel has not previously secured or

received a fee on the benefits for which a fee is now being sought, the claimant's signature, and an attorney's fee data sheet. If claimant's counsel is seeking payment of a fee from the claimant which exceeds the statutory fee, counsel must submit an affidavit establishing the basis for approval of the fee.

(2) Payment of Undisputed Attorney's Fees and Costs by Employer/Carrier/Servicing Agent. The employee and the employer/carrier/servicing agent may stipulate to the payment of attorney's fees and costs. The stipulation submitted for the judge's approval shall be accompanied by an attorney's fee data sheet. If claimant's counsel is seeking payment of a fee from the employer/carrier which exceeds the statutory fee, counsel must submit an affidavit establishing the basis for approval of the fee. The claimant must sign any stipulation providing for an employer/carrier-paid attorney's fee.

(3) Payment of Disputed Attorney's Fees and Costs.

(a) Any motion for attorney's fees and costs shall be filed, under oath, and shall include:

1. A statement of the facts relied on in support of the motion.

2. The statutory and legal basis relied upon.

3. A recitation of all benefits secured for the claimant through the attorney's efforts, including projected future benefits reduced to present value.

4. A detailed chronological listing of all time devoted to the claim, and

5. A detailed list of all taxable costs advanced or incurred.

(b) Within 20 days after the motion is served, the opposing party or parties shall file a response to the motion, which includes a detailed recitation of all matters which are disputed. Failure to file a timely and full response to a motion for attorney's fees and costs may result in acceptance of the allegations in the motion as true, imposition of sanctions, or both.

(c) If both entitlement and the amount of the fee are contested, the hearing may be bifurcated.

(d) Unless the judge orders otherwise, the parties shall exchange exhibit and witness lists no later than 10 days before the date of the attorney's fee hearing.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.34, 440.45(1)(a),(4) FS. History-New

60Q-6.125 Sanctions.

(1) Representations to the Judge. By filing a pleading or other document, an attorney or unrepresentative party is certifying to the best of that person's knowledge, information, and belief, formed after inquiry reasonable under the circumstances, that:

(a) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b) The claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of a new law;

(c) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;

(d) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(2) Determination of Violation. If, after notice and a reasonable opportunity to respond, the judge determines that subsection (1) has been violated, the judge may impose an appropriate sanction.

(3) How Initiated.

(a) A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subsection (1). It shall be served but shall not be filed with or presented to the judge unless the challenged paper, claim, defense, allegation, or denial is not withdrawn or appropriately corrected within 21 days after service of the motion. If warranted, the judge may award to the party prevailing on the motion the cost of the proceeding and attorney's fees incurred in presenting or opposing the motion.

(b) On his or her own initiative, the judge may enter an order describing the specific conduct that appears to violate subsection (1) and directing an attorney or party to show cause why sanctions should not be imposed.

(4) Nature of Sanctions.

(a) A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Penalties, fees, and costs awarded under this provision may not be recouped from the party unless the party has committed the violation.

(b) Monetary sanctions may not be awarded against a represented party for a violation of subsection (1)(b).

(5) Order. Any order imposing sanctions shall describe the conduct determined to constitute a violation of the rule and explain the basis for the sanction imposed.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.32, 440.33(1),(2), 440.45(1)(a),(4) FS. History--New

60Q-6.126 Disqualification or Recusal of Judges.

(1) Any motion for disqualification of a judge shall be made and determined pursuant to Fla. R. Jud. Admin. 2.160.

(2) Upon entry of an order of disqualification or after the voluntary recusal of a judge, the deputy chief judge shall re-assign the case to another judge.

Specific Authority 440.45(1)(a),(4) FS. Law Implemented 440.442, 440.45(1)(a),(4) FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Administrative Law Judge Linda M. Rigot and Administrative Law Judge T. Kent Wetherell, II

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Chief Judge Sharyn L. Smith and Deputy Chief Judge of Compensation Claims S. Scott Stephens

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 20, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 16, 2002

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

DOCKET NO.: 02-21R

RULE CHAPTER TITLE: Permits  
RULE CHAPTER NO.: 62-4

RULE TITLES: Definitions  
RULE NOS.: 62-4.020

Procedures to Obtain Permits and Other Authorizations; Applications 62-4.050

PURPOSE, EFFECT AND SUMMARY: This rulemaking will amend the fee schedule in section 62-4.050, F.A.C., to provide reduced permit application fees for environmental enhancement and restoration activities under the wetland resource and environmental resource permit programs (part IV of Chapter 373, F.S.). Amendments also will be proposed in Section 62-4.020, F.S., to define the enhancement and restoration activities that can qualify for the new fee. The definition will specify that such environmental enhancement and restoration activities may not be associated with activities that otherwise involve mitigation for other activities that require a permit under Part IV of Chapter 373, F.S.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jeanese McCree, Bureau of Beaches and Wetland Resources, Tallahassee, (850)245-8486 facsimile (850)245-8499, e-mail jeanese.mccree@dep.state.fl.us

The full text of this notice is published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**DEPARTMENT OF HEALTH**

**Board of Nursing**

RULE TITLES: Definitions  
RULE NOS.: 64B9-15.001

Certified Nursing Assistant Authorized Duties 64B9-15.002

Application for Certification 64B9-15.003  
Eligibility for Certification 64B9-15.004

Standards for Certified Nursing Assistant Training Programs 64B9-15.005

Standardized Curriculum 64B9-15.006



Approval of New Certified Nursing Assistant Training Programs	64B9-15.007
Testing and Competency Evaluation	64B9-15.008
In-service Training	64B9-15.011

PURPOSE AND EFFECT: The Board proposes to create the following rules to provide information related to the profession of Certified Nursing Assistants.

SUMMARY: Rule 64B9-15.001, F.A.C., provides definitions for the chapter on Certified Nursing Assistants. Rule 64B9-15.002, F.A.C., lists the individual duties and tasks a certified nursing assistant shall provide. Rule 64B9-15.003, F.A.C., provides how an applicant shall apply to the Board for certification as a certified nursing assistant. Rule 64B9-15.004, F.A.C., relates to what is necessary for an applicant to be eligible. Rule 64B9-15.005 lists the requirements certified nursing assistant training programs must meet in order to be licensed. Rule 64B9-15.006, F.A.C., details what standardized curriculum certified nursing assistant training programs must follow and establishes hour requirements for certification and field experience. Rule 64B9-15.007, F.A.C., lists the items a certified nursing assistant training program must include in its initial application for program approval. Rule 64B9-15.008, F.A.C., list the area of competency and relative weight of the various sections of the written certified nursing assistant examination. Rule 64B9-15.011, F.A.C., provides how much in-service training a certified nursing assistant must complete during a calendar year and specific area of training that must be completed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Cost was prepared.

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

SPECIFIC AUTHORITY 464.202, 464.203 FS.

LAW IMPLEMENTED 464.203, 464.2085 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Dan Coble, Executive Director, Board of Nursing/MQA, 4052 Bald Cypress Way, Tallahassee, Florida 32399-3252

THE FULL TEXT OF THE PROPOSED RULES IS:

64B9-15.001 Definitions.

(1) "Governing body" means a group of three or more individuals appointed, elected, or otherwise designated, to be ultimately responsible for a certified nursing assistant training program.

(2) "Nursing home" means a long-term care facility or a nursing home facility as defined in Chapter 400, Part II, F.S.

(3) "Professional nursing" means nursing functions performed by an individual licensed as a registered nurse or advanced registered nurse practitioner.

(4) "Department of Education" means the applicable agency in the Department of Education which licenses the educational unit (Ch. 6F-2, F.A.C.), i.e. Board of Education (Ch. 1003 or 1004, F.S.) or Commission on Independent Education (Ch.1005, F.S.).

(5) "Indirect care" for training and testing purposes means behaviors that are common threads throughout all skills, such as communication with the resident, resident rights, providing for the safety and comfort of the resident, and delivering care following infection control practices/standard precautions.

(6) "Supervision" means a registered nurse currently licensed under Chapter 464, F.S.; or a licensed practical nurse currently licensed under Chapter 464, F.S., to the extent allowed under section 400.23(3), F.S., authorizing procedures being carried out by a certified nursing assistant but who need not be present when such procedures are performed. The certified nursing assistant must be able to contact the registered nurse or licensed practical nurse acting in accordance with section 400.23(3), F.S., when needed for consultation and advice either in person or by communication devices. This definition is not applicable to a certified nursing assistant providing services in accordance with section 400.506(10)(b) and (c) or Part III of Ch. 400, Florida Statutes.

(7) "Direct Supervision" means the physical presence within the patient care unit of a healthcare facility or physical presence within a healthcare agency of a program instructor who assumes responsibility for the practice of the certified nursing assistant.

Specific Authority 464.202, 464.203 FS. Law Implemented 464.203, 464.2085 FS. History--New

64B9-15.002 Certified Nursing Assistant Authorized Duties.

(1) A certified nursing assistant shall provide care and assist residents with the following tasks related to the activities of daily living only under the supervision of a registered nurse or licensed practical nurse:

(a) Tasks associated with personal care:

1. Bathing.
2. Dressing.
3. Grooming.
4. Shaving.
5. Shampooing and caring for hair.
6. Providing and assisting with oral hygiene and denture care.
7. Caring for the skin.
8. Caring for the feet.
9. Caring for the nails.

- 10. Providing pericare.
- 11. Bed making and handling linen.
- 12. Maintaining a clean environment.
- (b) Tasks associated with maintaining mobility:
  - 1. Ambulating.
  - 2. Transferring.
  - 3. Transporting.
  - 4. Positioning.
  - 5. Turning.
  - 6. Lifting.
  - 7. Performing range of motion exercises.
  - 8. Maintaining body alignment.
- (c) Tasks associated with nutrition and hydration:
  - 1. Feeding and assisting the resident with eating.
  - 2. Assisting the resident with drinking.
- (d) Tasks associated with elimination.
  - 1. Toileting.
  - 2. Assisting with the use of the bedpan and urinal.
  - 3. Providing catheter care.
  - 4. Collecting specimens.
  - 5. Emptying ostomy bags, or changing bags that do not adhere to the skin.
  - 6. Bowel and bladder training.
- (e) Tasks associated with the use of assistive devices.
  - 1. Caring for dentures, eyeglasses, contact lenses, and hearing aids.
  - 2. Applying established prosthetic and orthotic devices.
  - 3. Applying braces.
  - 4. Applying antiembolus stockings.
  - 5. Assisting with wheelchairs, walkers, or crutches.
  - 6. Using comfort devices such as pillows, cradles, footboards, wedges, and boots.
  - 7. Assisting with and encouraging the use of self-help devices for eating, grooming, and other personal care tasks.
  - 8. Utilizing and assisting residents with devices for transferring, ambulation, alignment, and positioning.
  - 9. Using restraints.
- (f) Tasks associated with maintaining environment and resident safety, including handling of blood and body fluid and cleaning resident care areas.
  - (g) Tasks associated with data gathering.
    - 1. Measuring temperature, pulse, respiration, and blood pressure.
    - 2. Measuring height and weight.
    - 3. Measuring and recording oral intake.
    - 4. Measuring and recording urinary output, both voided and from urinary drainage systems.
    - 5. Measuring and recording emesis.
    - 6. Measuring and recording liquid stool.

- (h) Recognition of and reporting of abnormal resident findings, signs, and symptoms.
- (i) Post mortem care.
- (j) Tasks associated with resident socialization, leisure activities, reality orientation, and validation techniques.
- (k) Tasks associated with end of life care.
- (l) Tasks associated with basic first aid, CPR skills, and emergency care.
- (m) Tasks associated with compliance with resident's/patient's rights.
- (n) Tasks associated with daily documentation of certified nursing assistant services provided to the resident.
- (2) A certified nursing assistant shall perform all tasks with knowledge of and awareness of a resident's/patient's rights and developmental level.
- (3) A certified nursing assistant shall not perform any task which requires specialized nursing knowledge, judgment, or skills.
- (4) A certified nursing assistant may receive additional training beyond that required for initial certification and upon validation of competence in the skill by a registered nurse may perform such skills as authorized by the facility.
- (5) A certified nursing assistant shall not work independently without the supervision of a registered nurse or a licensed practical nurse.

Specific Authority 464.202, 464.203 FS. Law Implemented 464.203, 464.2085 FS. History—New

64B9-15.003 Application for Certification.

- (1) An applicant for initial certification as a certified nursing assistant shall apply to the Board on a form approved by the department.
- (2) An applicant for certification as a certified nursing assistant shall meet the requirements of section 464.203, F.S.

Specific Authority 464.202, 464.203 FS. Law Implemented 464.203, 464.2085 FS. History—New

64B9-15.004 Eligibility for Certification.

An applicant for initial certification demonstrates competency to read and write if the applicant passes the clinical skills portion of the certified nursing assistant examination given in English only.

Specific Authority 464.202, 464.203 FS. Law Implemented 464.203, 464.2085 FS. History—New

64B9-15.005 Standards for Certified Nursing Assistant Training Programs.

(1) A Certified Nursing Assistant program must meet requirements in Chapter 464, Part II, F.S., and these rules, be licensed by the Department of Education to offer the program, and meet federal requirements in 42CFR483 Subpart D.

(2) Each training program shall have a governing body which has authority to conduct the certified nursing assistant training program, determine general policy, and assure adequate financial support.

(a) A certified nursing assistant training program shall have a written description of the program that includes purpose, goals, and objectives/outcomes, and meets applicable federal and state requirements. The program description must be consistent with the purpose, goals, and objectives/outcomes of the parent institution, if any.

(b) A certified nursing assistant training program utilizing external clinical facilities shall have a written agreement between the program and each external clinical facility. The agreement shall define the rights and responsibilities of the program and the clinical facility, including the role and authority of the governing bodies of both the clinical facility and the program.

(c) A certified nursing assistant training program shall include clinical experiences in health care facilities with a standard license or a conditional license without class I or class II deficiency.

(d) A certified nursing assistant training program shall have written policies and procedures that are consistent with its parent institution, if any, and that meet federal, state, and if applicable, private postsecondary requirements. The program shall provide a regularly scheduled review of the policies and procedures governing the following areas:

1. Student attendance,  
2. Student grading, including program progression and completion criteria.

3. Student record maintenance,  
4. Student fees and financial aid,  
5. Student rights and responsibilities,  
6. Student grievance.

(3) Each certified nursing assistant training program shall appoint a certified nursing assistant training program coordinator who shall be responsible and accountable for compliance with these rules.

(a) A program coordinator shall hold an active, clear Florida license to practice professional nursing, two years of professional nursing experience, and one year of experience in nursing home services including supervision of certified nursing assistants.

(b) A director of nursing in a nursing home-based program may assume the administration and accountability for a program as the program coordinator but shall not engage in classroom or clinical teaching in that program.

(c) A program coordinator assumes overall accountability for the following:

1. Acting as liaison with the Board related to the program's continuing compliance.

2. Participating in preparing and administering a financial plan.

3. Developing, implementing, and evaluating the training program.

4. Arranging for educational facilities, clinical resources, and faculty development.

5. Recruiting, supervising, and evaluating qualified instructors who meet criteria in subsection 64B9-15.005(4), F.A.C., and ensuring there are sufficient instructors to meet clinical ratios and instructional needs.

6. Providing admission and program completion requirements in written form to students prior to admission to the program;

7. Developing and implementing written policies necessary for the operation of the program.

8. Ensuring that instructors provide classroom instruction and clinical supervision to students at all times during scheduled program hours.

9. Providing documentation of program completion to a student within 10 days of program completion.

(4) Each certified nursing assistant training program shall have one or more program instructors who shall be responsible and accountable for the instructional aspects of the certified nursing assistant training program.

(a) A program instructor shall hold a clear, active Florida license to practice professional nursing, have at least 1 year of clinical experience, and one of the following:

1. Have completed a course in teaching adults; or  
2. Have at least 1 year of experience in teaching adults; or  
3. Have at least 1 year of experience in supervising nursing assistants

(b) A program instructor's responsibilities for classroom and clinical instruction include:

1. Participating in the planning of each learning experience;

2. Ensuring that course objectives/outcomes are accomplished;

3. Requiring a grade of 70% or greater on all theoretical examinations;

4. Requiring a passing grade for satisfactory completion of all skills evaluations;

5. Ensuring that students do not perform activities for which they have not received instruction and in which they have not been found competent;

6. Supervising and evaluating students giving care to clients in clinical areas;

7. Providing direct supervision in the classroom and in clinical experiences;

8. Monitoring health care professionals who assist in providing program instruction.

(c) A program coordinator may be an instructor but must meet the standards established in (a) above.

(d) Other personnel from the health professions may supplement the program instructor; these supplemental personnel must have a least one year of experience in their field.

(5) The certified nurse assistant training program shall have sufficient staff, finances, resources, materials, space, and supplies to meet the purpose of the program and the needs of students, faculty, administration, and staff.

(a) Classrooms and skill laboratories shall meet requirements in Ch 1013, F.S. and Ch. 6-2, F.A.C.

(b) Current reference materials shall be appropriate to the level of the student population and the curriculum.

(c) A training program shall provide a minimum clinical instruction ratio for professional nurse to student of 1 to 15 for students caring directly for residents or clients.

(d) A training program shall provide the standardized curriculum under Rule 64B9-15.006, F.A.C., in compliance with federal guidelines.

(e) A training program shall plan and schedule clinical experiences according to the course curriculum.

(f) The training program shall include clinical experience for each certified nursing assistant student.

(g) The training program shall ensure that certified nursing assistant students are identified and treated as students and not utilized as staff during the instructional and clinical hours the students are enrolled in a certified nursing assistant training program.

(h) A training program shall provide instructional and education materials adequate to meet the needs of the program, the number of students, and the instructional staff. There shall be an adequate number of instructional tools and equipment for simulating resident care to provide ample opportunity for students to develop skill competency prior to direct care experiences.

(i) A training program shall maintain program records and student records as required by the Department of Education.

(6) If the board, through an investigation by the department, finds that an approved program no longer meets the required standards, it shall place the program on probationary status until such time as the standards are restored. If a program fails to correct these conditions within a specified period, the board shall rescind the approval.

(7) A training program must maintain a passing rate on certified nursing assistant examination for its graduates of not less than 10% below the state average as reported annually. If a program's passing rate drops below the standard for two consecutive years, the program must be reviewed by the board. The board shall take action to assist the program to return to compliance, place the program on probation or rescind the program approval.

(8) A training program shall permit the Board, or a state agency designated by the Board, to conduct an on-site evaluation for initial Board approval and renewal of approval as deemed necessary by the Board.

(9) The certified nursing assistant training program must report to the Board any changes in program coordinator or program location within 60 days.

(10) Certified nursing assistant training program approval shall not be transferred with a change of ownership. The new owner must apply per Rule 64B9-15.007, F.A.C.

(11) A certified nursing assistant training program shall notify the Board of any name change within thirty (30) days of the change.

(12) All Certified Nursing Assistant training programs with current approval from the Department of Education will maintain approval until 180 days after the effective date of these rules. A renewal application with the Board of Nursing demonstrating compliance with these rules will be required. Programs will be approved for a two-year period.

Specific Authority 464.202, 464.203 FS. Law Implemented 464.203, 464.2085 FS. History—New

#### 64B9-15.006 Standardized Curriculum.

(1) The standardized curriculum content for a certified nursing assistant training program shall follow the curriculum framework established by the Department of Education (Ch. 6A-1.09417, F.A.C.) and shall include material that will provide a basic level of both knowledge and demonstrable skills for each student completing the program.

(2) The standardized curriculum shall require a minimum of 80 hours of classroom and 40 hours clinical instruction.

(3) Prior to any direct contact with a resident, a training program shall require that a student receive a minimum of 16 hours of classroom instruction in communication and interpersonal skills; infection control; safety/emergency procedures, including the Heimlich maneuver; promoting residents' independence; and respecting residents' rights.

(4) Clinical experience shall be provided under the direct supervision of the program instructor.

Specific Authority 464.202, 464.203 FS. Law Implemented 464.203, 464.2085 FS. History—New

#### 64B9-15.007 Approval of New Certified Nursing Assistant Training Programs.

(1) Certified nursing assistant training programs shall be approved by the Board prior to being offered. Retroactive approval shall not be granted.

(2) A person seeking approval for a certified nursing assistant training program shall submit an application to the Board.

(3) The application for initial program approval shall include:

(a) Program name, sponsoring organization, address and campus location.

- (b) Name and qualifications of program coordinator.
- (c) Name and qualifications of program instructors.
- (d) Evidence of current academic accreditation, if any.
- (e) Approval by Department of Education to offer the training program.
- (f) Program outline with objectives/outcomes, curriculum content divided into number and sequence of didactic and clinical hours, teaching methodology, textbooks, clinical skills checklist, copy of certificate of completion, and tentative calendar schedule for the program.
- (g) Medicare certification status, if any.
- (h) Evidence of sufficient financial and other resources to provide the required elements of the training program.
- (i) Information on the availability of clinical facilities.
- (j) Evidence of compliance with Rules 64B9-15.005, F.A.C.

(4) The Board may schedule an on-site evaluation of the program.

(5) A training program shall not enroll students prior to receiving program approval.

(6) Following review of the completed application packet, the Board shall grant provisional approval pending the passing rate results of the first graduating class or deny the application.

Specific Authority 464.202, 464.203 FS. Law Implemented 464.203, 464.2085 FS. History—New

64B9-15.008 Testing and Competency Evaluation.

(1) The Certified Nursing Assistant Examination shall consist of the Written Exam and the Clinical Skills Test.

(2) The general areas of competency and relative weight of the Written Exam are as follows:

- (a) Role of the Nursing Assistant (16-24%).
- (b) Promotion of Health and Safety (14-17%).
- (c) Promotion of Function and Health of Residents (20-26%).
- (d) Basic Nursing Skills (24-28%).
- (e) Providing Specialized Care (14-19%).

(3) The minimum passing level of the Written Exam varies depending on the difficulty of the items selected by the testing service for each form of the examination and will be established by the testing service for each form of the examination based on its testing expertise.

(4) The Clinical Skill Test includes three of the following tasks in addition to hand washing and indirect care:

- (a) Personal Care.
  - 1. Perineal Care-male and female.
  - 2. Catheter care.
  - 3. Dressing.
  - 4. Partial Bed bath.
  - 5. Toileting – Bedpan.
  - 6. Mouth Care – Brushing Teeth.
  - 7. Mouth Care – Care of Dentures.

- 8. Grooming – Hair and Nail Care.
- 9. Feeding.
- (b) Promoting Function, Health, and Safety.
  - 1. Change of Position.
  - 2. Transfer.
  - 3. Range of Motion for upper extremities.
  - 4. Range of Motion for lower extremities.
- (c) Environmental Activities – Changing an Occupied Bed.

- (d) Reporting and Recording.
  - 1. Measure and Record vital signs.
  - 2. Measure and Record Height and Weight.
  - 3. Measure and Record Content of Urinary Drainage Bag.

(5) The recommended minimum passing level for each task is 3 Standard Errors of Measure below the mean. The minimum passing level of the Clinical Skill Test varies depending on the difficulty of the items selected by the testing service for each form of the examination and will be established by the testing service for each form of the examination based on its testing expertise. The candidate must have a minimum passing score on each of the five tasks on an examination form to pass the Clinical Skills Test.

(6) If an applicant fails to pass the nursing assistant competency examination in three attempts within five years, the applicant is not eligible for reexamination unless the applicant completes an approved training program.

(7) The Clinical Skills Observers for the Clinical Skill Test must meet the following criteria:

- (a) Be a registered nurse with a minimum of two years of nursing experience.
- (b) Have at least one year of experience in the provision of long-term care.
- (c) Be currently licensed as a registered nurse in the state of Florida.
- (d) Shall not have any personal or professional relationship to any examinee taking the clinical skills test.

Specific Authority 464.202, 464.203 FS. Law Implemented 464.203, 464.2085 FS. History—New

64B9-15.011 In-service Training.

(1) Each certified nursing assistant must complete a minimum of 18 hours of in-service training each calendar year. For candidates certified during the calendar year, the minimum in-service hours required shall be prorated at the rate of 1.5 hours per month from the month of initial certification to the end of the calendar year.

(2) Every 2 years, in-service training hours shall include, but are not limited to, the following areas:

- (a) HIV/AIDS, Infection Control.
- (b) Domestic Violence.
- (c) Medical Record Documentation and Legal Aspects Appropriate to Nursing Assistants.

(d) Resident Rights.

(e) Communication with cognitively impaired clients.

(f) CPR skills.

(g) Medical Error Prevention and Safety.

(3) After meeting the requirement in (2), health care career/technical courses in a college, university, or approved nursing program may be used to meet the hours requirement in (1).

(4) A certified nursing assistant is exempt from the inservice education requirement in (1) if the certified nursing assistant was on active duty with the Armed Forces for 6 months or more during the calendar year. However, this exemption will not arise on the basis of the performance of short periods of active duty (such as summer or weekend drills) by a member of the Armed Forces Reserves. Duty in the United States Public Health Service is not considered duty in the Armed Forces.

(5) A certified nursing assistant who is the spouse of a member of the Armed Forces and was caused to be absent from Florida due to the spouse' duties with the Armed Forces shall be exempt from inservice hours requirements. The certified nursing assistant must show satisfactory proof of the absence and the spouse; military status.

(6) Each certified nursing assistant must retain in-service compliance records for a period of 4 years and submit records to the board if required for auditing.

Specific Authority 464.202, 464.203 FS. Law Implemented 464.203, 464.2085 FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Nursing  
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Nursing  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 12, 2002  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 12, 2002

**DEPARTMENT OF HEALTH**

**Board of Psychology**

RULE TITLE: Provisional License; Supervision of Provisional Licensees  
RULE NO.: 64B19-11.011

PURPOSE AND EFFECT: The Board proposes an amendment to delineate the responsibilities of the supervisor of provisional licensees.

SUMMARY: This amendment gives definite criteria that the supervisor of provisional licensees has to certify and perform.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Cost was prepared.

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

SPECIFIC AUTHORITY: 456.013, 490.003(6), 490.004(4), 490.0051 FS.

LAW IMPLEMENTED: 456.013, 490.003(6), 490.0051, 490.004(4), 490.009 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Executive Director, Board of Psychology /MQA, 2020 Capital Circle, S. E., Bin #C05, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B19-11.011 Provisional License; Supervision of Provisional Licensees.

All applicants applying for provisional licensure shall:

(1) Complete and submit to the Board form DOH/MQA/PY/PROVISIONAL-APP/rev-10/01, "Application for Provisional Psychology Licensure," which is hereby incorporated by reference, effective 3-24-02, copies of which may be obtained from the Board office;

(2) Submit a letter signed by a licensed psychologist who is in good standing and not under disciplinary investigation, who agrees to supervise the provisional licensee according to law;

(3) State on the application that the applicant is not under investigation in this or any other state for an offense which would constitute a violation in Florida.

(4) The provisional licensee shall insure that the supervisor notifies the Board immediately and in writing of the termination of the supervision.

(5) In the event that supervision is terminated, the provisional psychologist shall cease practice until a new supervisor is approved by the Board.

(6) Supervisors' Responsibilities. The Board requires the supervisor to perform and to certify that the supervisor has:

(a) Entered into an agreement with the provisional licensee which details the provisional licensee's obligations and remuneration as well as the supervisor's responsibilities to the provisional licensee;

(b) Determined that the provisional licensee was capable of providing competent and safe psychological service to the clients;

(c) Maintained professional responsibility for the provisional licensee's work;

(d) Provided two (2) hours of clinical supervision each week, one (1) hour of which was individual, face-to-face supervision;

(e) Prevailed in all professional disagreements with the provisional licensee;

(f) Kept informed of all professional services performed by the provisional licensee;

(g) Advised the Board if the supervisor has received any complaints about the provisional licensee or has any reason to suspect that the provisional licensee is less than fully ethical, professional, or qualified for licensure.

Specific Authority 456.013, 490.003(6), 490.004(4), 490.0051 FS. Law Implemented 456.013, 490.003(6), 490.0051, 490.004(4), 490.009(1)(p), (2)(e) FS. History—New 1-27-98, Amended 3-24-02, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Psychology

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Psychology

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 16, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 6, 2002

**DEPARTMENT OF HEALTH**

**Board of Psychology**

RULE TITLE: Continuing Education Provider Fees RULE NO.: 64B19-12.009

PURPOSE AND EFFECT: The Board proposes to change the date that the renewal fee for continuing education providers is due.

SUMMARY: This amendment changes the date that the renewal fee for continuing education providers is due from February 28th to May 31st of every even numbered year.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Cost was prepared.

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

SPECIFIC AUTHORITY: 456.025(5), 490.0085(4) FS.

LAW IMPLEMENTED: 456.025 (5), 490.0085(4) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Executive Director, Board of Psychology /MQA, 2020 Capital Circle, S. E., Bin #C05, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B19-12.009 Continuing Education Provider Fees.

(1) The application fee and the renewal fee for Board approval of a continuing education provider is \$500.00.

(2) The application or renewal fee shall be paid to the Department of Health by May 31 ~~February 28~~ of every even numbered year.

Specific Authority 456.025(3),(4),(5), 490.0085(4) FS. Law Implemented 456.025(3),(4),(5), 490.0085(4) FS. History—New 10-14-87, Amended 6-23-91, 10-28-92, Formerly 21U-12.001, 61F13-12.011, Amended 1-7-96, Formerly 59AA-12.009, Amended 9-20-98, 8-8-01, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Psychology

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Psychology

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 16, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 6, 2002

**DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

**Economic Self-Sufficiency Program**

RULE TITLE: Food Stamp Program Issuance RULE NO. 65A-1.604

PURPOSE AND EFFECT: Section 409.942, F.S., established the Electronic Benefit Transfer (EBT) program. This rule amendment changes food stamp issuance policies to reflect the Electronic Benefit Transfer (EBT) system as the department’s method of benefit issuance. The EBT system is a means of electronically providing state administered food stamp benefits to eligible participants. The EBT system was gradually implemented in Florida beginning in 1997, with statewide implementation completed in 1998.

SUMMARY: This rule amendment updates the process for the issuance of food stamps to the EBT system. Under the Electronic Benefit Transfer system, the participant uses a machine-readable access card to authorize the transfer of government benefits from a federal or state account to a retailer account to pay for products received.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 414.45 FS.

LAW IMPLEMENTED: 409.942, 414.31 FS.

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

TIME AND DATE: 10:00 a.m., January 27, 2003

PLACE: 1317 Winewood Boulevard, Building 3, Room 100, Tallahassee, Florida 32399-0700

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND ECONOMIC STATEMENT IS: Audrey Mitchell, Program Administrator, Public Assistance Policy, Policy Support Unit, 1317 Winewood Boulevard, Building 3, Room 406-A, Tallahassee, Florida 32399-0700, (850)488-3090

THE FULL TEXT OF THE PROPOSED RULE IS:

(Substantial rewording of Rule 65A-1.604 follows. See Florida Administrative Code for present text.)

65A-1.604 Food Stamp Program Issuance.

(1) Food Stamps are issued through the Electronics Benefits Transfer (EBT) system.

(2) Benefit Availability.

(a) Food stamp availability dates will be staggered over the first 15 days of each month. Benefit availability to assistance groups (AGs) is based on the terminal digits of the AG's case number. AGs are able to receive their monthly allotment on their assigned availability date or any subsequent day in that month. Food stamp benefits placed in the EBT account may be accessed for 365 days following their being made available in the account.

(b) The EBT system supports mass overrides of benefit availability dates in instances of disasters or other emergencies, in which an executive decision approves override of benefit availability policies. This permits clients in areas where hurricanes or other disasters are threatening to be able to access their benefits earlier to prepare for such events.

Specific Authority 414.45 FS. Law Implemented 414.31 FS, 409.924 FS. History--New 1-31-94, Formerly 10C-1.604, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rodney Mcinnis, Operations Review Specialist

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Audrey Mitchell, Program Administrator, Public Assistance Policy, (850)488-3090

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 14, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 13, 2002

### Section III Notices of Changes, Corrections and Withdrawals

#### DEPARTMENT OF TRANSPORTATION

RULE CHAPTER NO.: 14-15  
RULE NO.: 14-15.0081  
RULE CHAPTER TITLE: Incorporation by Reference  
RULE TITLE: Toll Facilities Description and Toll Rate Schedule

#### NOTICE OF RESCHEDULED HEARING

The Department of Transportation, Florida's Turnpike Enterprise announces the rescheduling of the public hearing for rulemaking to allow the public an opportunity to provide input to changes in the Toll Facilities Description and Toll Rate Schedule on Florida's Turnpike at State Road 710/Northlake Boulevard in Palm Beach County. That hearing, which was scheduled for January 7, 2003, is rescheduled as follows:

DATE AND TIMES: February 6, 2003, 6:00 p.m. – Informal Open House; 6:30 p.m. – Formal Public Hearing

PLACE: Palm Beach Gardens Community High School, 4245 Holly Drive, Palm Beach Gardens, Florida

GENERAL SUBJECT MATTER TO BE CONSIDERED: Florida's Turnpike Enterprise of the Florida Department of Transportation scheduled a public hearing to allow an opportunity to provide input to changes in the Toll Facilities Description and Toll Rate Schedule required by the construction of an interchange constructed for SunPass use only on Florida's Turnpike at State Road 710/Northlake Boulevard in Palm Beach County.

NOTE: A design public hearing, which was scheduled at the same date, time, and place is also being rescheduled by separate notice in Section VI of this Florida Administrative Weekly. The original Notice of Rulemaking was published in Vol. 28, No. 34, Florida Administrative Weekly, dated August 23, 2002. The Change Notice, which scheduled the December 3, 2002, hearing was published in Vol. 28, No. 45, Florida Administrative Weekly, dated November 8, 2002. The Change Notice, which scheduled the January 7, 2003, hearing was published in Vol. 28, No. 48, Florida Administrative Weekly, dated November 27, 2002.

#### WATER MANAGEMENT DISTRICTS

##### South Florida Water Management District

RULE NO.: 40E-2.041  
RULE TITLE: Permits Required

#### NOTICE OF WITHDRAWAL

Notice is hereby given that the Notice of Proposed Rulemaking published in Vol. 27, No. 26, June 29, 2001, issue of the Florida Administrative Weekly, has been withdrawn. The proposed amendments to this rule were successfully challenged.

#### WATER MANAGEMENT DISTRICTS

##### South Florida Water Management District

RULE NOS.: 40E-3.021, 40E-3.031, 40E-3.035, 40E-3.037, 40E-3.038  
RULE TITLES: Definitions, Implementation, Agreements, Rules and Publications Incorporated by Reference, Violations of Contractor Licensing Requirements