

Section II Proposed Rules

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Sales and Use Tax	12A-1
RULE TITLES:	RULE NOS.:
Aircraft, Boats, Mobile Homes, and Motor Vehicles	12A-1.007
Tax Due at Time of Sale; Tax Returns and Regulations	12A-1.056
Rentals, Leases, or License to Use Tangible Personal Property	12A-1.071
Public Use Forms	12A-1.097

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-1.007, F.A.C. (Aircraft, Boats, Mobile Homes, and Motor Vehicles), is to: (1) clarify how a registered dealer may purchase items exclusively for purposes of lease or rental tax-exempt; and (2) provide guidelines on the lease or rental of motor vehicles and commercial motor vehicles.

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) reorganize the rule for ease of reading proposed guidelines for the due dates for payments and tax returns, the collection allowance, the requirements for estimated tax, the imposition of penalties, and the imposition of interest; and (2) provide a single set of guidelines for the imposition of penalties and interest for sales and use taxes, discretionary sales surtax, surcharges, or fees imposed by or administered under Chapter 212, F.S.

The purpose of the proposed amendments to Rule 12A-1.071, F.A.C. (Rentals, Leases, or License to Use Tangible Personal Property), is to: (1) clarify how a registered dealer may purchase items exclusively for purposes of lease or rental tax-exempt; and (2) remove unnecessary provisions.

The purpose of the proposed amendments to Rule 12A-1.097, F.A.C. (Public Use Forms), is to: (1) adopt, by reference, new forms and changes to forms used by the Department in the administration of sales and use tax; and (2) provide technical changes for guidelines on obtaining forms from the Department.

SUMMARY: The proposed amendments to Rule 12A-1.007, F.A.C.: (1) clarify how a registered dealer may purchase items exclusively for purposes of lease or rental tax-exempt; (2) provide guidelines on the lease or rental of commercial motor vehicles; (3) provide guidelines for the lease or rental of motor vehicles for periods of less than 12 months and for periods of 12 months or longer; and (4) clarify when separately itemized

charges for insurance, fuel, and fuel option charges are included in the total amount of the lease or rental charge subject to tax.

The proposed amendments to Rule 12A-1.056, F.A.C. (Tax Due at Time of Sale; Tax Returns and Regulations): (1) reorganize the rule for ease of reading guidelines on due dates for payments and tax returns, the collection allowance, requirements for estimated tax, the imposition of penalties, and the imposition of interest; (2) provide guidelines for dealers who maintain records on a period other than a monthly basis on how to request a variation from monthly filing and remittance of the tax; (3) provide guidelines to dealers who operate two or more places of business in a single county on how to obtain a county control number for reporting purposes; (4) provide guidelines to taxpayers who operate two or more places of business on how to obtain a consolidated reporting number and how to file consolidated sales and use tax returns; (5) provide that dealers are required to file a return for each tax reporting period even when no tax is due; (6) provide that the failure to secure a return does not relieve the dealer's liability for filing the return or remitting the tax; (7) provide guidelines regarding the collection allowance for consolidated returns and for returns filed using a county control number; (8) remove an unnecessary example of the collection allowance; (9) provide guidelines on when the collection allowance will be denied by the Department for the filing of an incomplete return; (10) provide guidelines regarding the requirements to pay estimated tax and the penalties imposed for failure to timely pay estimated tax; (11) provide a single set of guidelines for the imposition of penalties and interest for sales and use taxes, discretionary sales surtax, surcharges, or fees imposed by or administered under Chapter 212, F.S.; (12) provide guidelines regarding the imposition of the penalties imposed under s. 212.12(2), F.S., as amended by Section 20, Ch. 2003-254, L.O.F., for failure to timely pay the tax or fee shown due on a return, for failure to timely file a return, and failure to disclose a tax or fee due; and (13) provide guidelines on how the penalties apply to taxpayers who file consolidated returns or file returns using county control reporting numbers.

The proposed amendments to Rule 12A-1.071, F.A.C.: (1) clarify how a registered dealer may purchase items exclusively for purposes of lease or rental tax-exempt; (2) remove provisions regarding leased commercial motor vehicles that will be provided in Rule 12A-1.007(13), F.A.C., as amended; (3) remove provisions regarding purchases for resale that are provided in Rule 12A-1.039, F.A.C.; and (4) provide technical changes.

The proposed amendments to Rule 12A-1.097, F.A.C.: (1) adopt, by reference, new forms and changes to forms used by the Department in the administration of sales and use tax; and (2) provide technical changes for guidelines on obtaining forms from 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: 201.11, 202.17(3)(a), 202.22(6), 202.26(3), 212.05(1), 212.0515(7), 212.07(1)(b), 212.08(5)(b)4.,(7), 212.11(5)(b), 212.12(1)(b)2., 212.17(6), 212.18(2),(3), 213.06(1), 376.70(6)(b), 376.75(9)(b), 403.718(3)(b), 403.7185(3)(b), 443.171(2),(7) FS.

LAW IMPLEMENTED: 92.525(1)(b),(3), 95.091, 125.0104, 125.0108, 201.01, 201.08(1)(a), 201.133, 201.17(1)-(5), 202.11(2),(3),(6),(16),(24), 202.17, 202.22(3)-(6), 202.28(1), 203.01, 212.02, 212.03, 212.0305, 212.031, 212.04, 212.05, 212.0501, 212.0506, 212.0515, 212.054, 212.055, 212.06, 212.0601, 212.0606, 212.07(1),(2),(7),(8),(9), 212.08, 212.084(3), 212.085, 212.09, 212.096, 212.11, 212.12(1),(2),(3),(4),(5),(9),(12),(13), 212.13, 212.14(2),(5), 212.15(1), 212.17, 212.18(2),(3), 213.235, 213.29, 213.255(1),(2),(3), 213.37, 213.755, 215.26(2), 219.07, 288.1258, 370.07(3), 373.41492, 376.70, 376.75, 402.61, 403.717, 403.718, 403.7185, 443.036, 443.121(1),(3), 443.131, 443.1315, 443.1316, 443.171(2),(7), 681.117 FS.

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

TIME AND DATE: 9:00 a.m., August 2, 2004

PLACE: Room 118, Carlton Building, 501 South Calhoun Street, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before Technical Assistance and Dispute Resolution is asked to advise the Department at least 48 hours before such proceeding by contacting: Larry Green, (850)922-4830. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, 1(800)955-8770 (Voice) and 1(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, (850)922-4729

THE FULL TEXT OF THE PROPOSED RULES IS:

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

- (1) through (12) No change.
- (13) Lease or Rental.

(a) 1. The rental or lease of an aircraft, boat, mobile home, or motor vehicle, which is used or stored in this state, is subject to tax shall be taxable without regard to its prior use or tax paid on the purchase outside this state. The lessor is required to be registered as a dealer and to collect tax on the total amount of the lease or rental charges.

~~2.(b)1-~~ The purchase by a registered dealer of an aircraft, boat, mobile home, or motor vehicle exclusively for lease or rental purposes is may be made tax exempt when the purchaser/lessor issues a resale certificate to the dealer at the time of purchase in lieu of paying tax. The purchasing dealer is required to issue the selling dealer a copy of the purchasing dealer's Annual Resale Certificate at the time of purchase in lieu of paying tax, as provided in Rule 12A-1.039, F.A.C. The lessor shall collect tax from his customers on the total rental charge.

~~2-~~ In the case of commercial motor vehicles which are self-propelled or towed and used on the public highways in commerce to transport persons or cargo having a gross weight of 10,000 pounds or more, when the term of the lease or rental to any lessee is for a period of 12 months or more, the owner/lessor may pay the Florida tax on the acquisition of the motor vehicle. In such cases, the rental to the initial lessee and renewals thereof to the same lessee are not subject to the rental tax. The rental of the same commercial motor vehicle to subsequent lessees by the owner/lessor is taxable.

(b) Commercial Motor Vehicles.

1. For purposes of this paragraph, the term "commercial motor vehicle," as defined in Section 316.003(66)(a), F.S., means any self-propelled or towed vehicle used on the public highways in commerce to transport passengers or cargo, if such vehicle has a gross vehicle weight rating of 10,000 pounds or more.

2. The lease or rental of a commercial motor vehicle to one lessee or renter for a period of 12 months or longer, and any renewals of such lease or rental, is exempt when:

a. Sales or use tax is paid on the purchase price of the commercial motor vehicle by the lessor; and

b. The lease or rental of the commercial motor vehicle is an established business or part of an established business or the commercial motor vehicle is incidental or germane to such business.

3. A credit against any Florida use tax and discretionary sales surtax due when the commercial motor vehicle is registered, licensed, or titled in Florida will be allowed to any purchaser who provides documentary evidence that a like tax has been lawfully imposed on the purchase of the commercial motor vehicle and has been paid to another state, territory of the United States, or 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 District of Columbia.

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

4. The lease or rental of the same commercial motor vehicle to any other lessee or renter is subject to tax.

(c) Motor Vehicle Leased or Rented for Less Than 12 Months. The subsequent sale of the motor vehicle by the owner/lessor is taxable, except when the vehicle is sold for resale.

1. The entire charge for the lease or rental of a motor vehicle for a period of less than 12 months is subject to tax when the contract to lease or rent a motor vehicle is entered into in Florida or the motor vehicle is delivered or picked up in Florida at the commencement of the lease or rental term. Florida sales tax is due during the entire lease period even when the vehicle is used in another state or dropped off in another state or the payment for the lease or rental is made in another state.

2. The entire charge for the lease or rental of a motor vehicle for a period of less than 12 months is exempt when the contract to lease or rent a motor vehicle is entered into in another state and the motor vehicle is not delivered or picked up in Florida at the commencement of the lease or rental term. This exemption applies even when the leased or rented motor vehicle is used in Florida or dropped off in Florida or the payment for the lease or rental is made in Florida.

(d) Motor Vehicle Leased or Rented for 12 Months or Longer.

1. The lease or rental of a motor vehicle registered in Florida for a period of 12 months or longer is subject to tax. A rental car agency should charge the rental tax to its customers on the total rental charge, including any charge for insurance, except for a policy issued to the customer by a licensed insurance company for which a specific charge is made.

2. When the taxpayer documents that a vehicle registered in Florida is being used outside Florida and that tax is being paid on the lease or rental payments to another state, no tax is due on the lease or rental of the motor vehicle. The taxpayer must maintain copies of invoices or similar documents evidencing that the lessor is collecting another state's sales tax from the lessee or copies of cancelled checks evidencing that the taxpayer has self-accrued and paid another state's sales tax directly to that state. Where a "collision damage waiver" fee is paid by a customer (lessee) to the lessor of a vehicle for the lessor's waiver of all claims against the customer for damage to the leased vehicle and the fee is not required as a condition of the lease, the fee, when separately stated, does not constitute rent and is not taxable.

3. When a motor vehicle that is leased or rented outside Florida is imported into Florida and registered or licensed in Florida, tax is due on the amount of the monthly lease payments. A credit against the Florida tax and discretionary sales surtax due will be allowed for any lawfully imposed sales or use tax paid to another state, territory of the United States, or District of Columbia when all the following conditions are met: Where a "personal accident insurance" fee is paid by a customer (lessee) to the lessor of a vehicle, which fee covers personal injuries, and the fee is not required as a condition of the lease, the fee, when separately stated, does not constitute rent and is not taxable.

a. The other state, territory of the United States, or District of Columbia requires the lawfully imposed sales or use tax to be paid at the time of lease or rental on the total lease or rental payments due under the terms of the lease or rental agreement;

b. The tax must be lawfully imposed on the lessee. A credit will not be allowed for tax paid to another state, territory of the United States, or District of Columbia when the sales or use tax is lawfully imposed on the lessor, even though the lessee may be contractually obligated to reimburse the lessor;

c. The other state, territory of the United States, or District of Columbia does not allow a refund of the sales or use tax paid at the inception of the lease or rental agreement if the motor vehicle is removed from that state, territory of the United States, or District of Columbia; and

d. The lessee provides documentary evidence that the like tax lawfully imposed on the sale or use of the motor vehicle has been paid to another state, territory of the United States, or District of Columbia.

4. The credit allowed against any Florida use tax and discretionary sales surtax due when the motor vehicle is licensed or registered in Florida is the amount of legally imposed like tax paid to the other state, territory of the United States, or District of Columbia. When the applicable tax credit is equal to or greater than the amount of Florida use tax and discretionary sales surtax due, no additional use tax or discretionary sales surtax is due. When the tax paid to another state, territory of the United States, or District of Columbia is greater than the Florida use tax and discretionary sales surtax due, no refund is due from the State of Florida.

(e) Charges for the Lease or Rental of Motor Vehicles.

1. Charges for Insurance. Any separately itemized charge or fee for insurance coverage required to be paid by the lessee or renter is subject to tax. When the lessee or renter has the option to elect insurance coverage, any separately itemized charge or fee for the optional insurance coverage is not subject to tax. For example, a separately itemized charge for a "collision damage waiver fee" that is optional to the lessee or renter for the lessor's waiver of all claims against the lessee or renter for damage to the motor vehicle is not subject to tax. A separately itemized charge for a "personal accident insurance fee" that is optional to the lessee or renter for personal injury

~~coverage is not subject to tax. Parts and materials used to maintain, repair, rebuild, and recondition aircraft, boats, and motor vehicles, which are used exclusively for rental purposes, are exempt where tax is charged on the rental of such vehicles. Likewise exempt when the rentals are subject to the tax are polishes, lubrication oils, and greases used in their operation when purchased by the owner-lessor of the vehicles. All items above are subject to the tax when the owner-lessor of motor vehicles is not required to charge tax on the rentals of the motor vehicles.~~

2. Charges for Fuel. Any separately itemized charge for fuels upon which the fuel taxes imposed under Chapter 206, F.S., have been paid are not subject to tax. However, when a separately itemized charge for a fuel purchase option (e.g., "FPO – Fuel Purchase Option") is required and no allowance is made for the amount of fuel remaining in the tank, the charge is not a charge for the price of fuel upon which the fuel taxes have been paid. Such separately itemized charges required to be paid for fuel purchase options are a part of the total lease or rental charges subject to tax. The taxable gross proceeds derived from the lease or rental of a vehicle shall not include the price of fuel on which the proper tax has been paid, provided that the fuel is separately stated from the rental or lease charge. If the price of the fuel is not separately stated from the rental or lease charge, it is considered to be a portion of the gross proceeds derived from the rental or lease and is fully taxable.

(f) When a taxicab company, limousine company, or any other transportation for hire company rents, leases, or grants a license to use a taxicab, limousine, other vehicle, dispatch equipment, or any other tangible personal property to an independent operator, the rental, lease, or license to use such property, as well as the dispatch and all other related services which are a part of the rental, lease, or license to use, the vehicle, dispatch equipment, or other tangible personal property, are not subject to sales tax. However, the exemptions provided under this paragraph only apply if the applicable Florida sales or use tax has been paid on the acquisition of the taxicab, limousine, other vehicle, dispatch equipment, or other tangible personal property.

(14) through (28) 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)(i),(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, 8-1-02, 4-17-03, 4-17-03.

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

(1) DUE DATES FOR PAYMENTS AND TAX RETURNS.

(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, are due to the Department on the first day of the month following the date of sale or transaction. The payment and return must be delivered to the Department 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 the 20th day falls on a Saturday, Sunday, or 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 Ch. 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, ~~semiannual~~ semi-annual, or annual reporting is authorized by the Department pursuant to Section 212.11(1)(c) or (d), F.S., the tax is due the first day of the month following the authorized reporting period and becomes delinquent on the 21st day of that month.

(c) Quarterly, semiannual, or annual filers that remit an excessive tax payment for the period July 1 through June 30 which represents a nonrecurring business activity can request to continue to file their returns quarterly, ~~semiannual~~ semi-annual, or annually by submitting a written request to the Florida Department of Revenue, Central Registration, Post Office Box 6480, Tallahassee, Florida 32314-6480. When a dealer makes a written request to continue on the same filing frequency, the Executive Director or the Executive Director's designee will determine whether the dealer's request is based on a nonrecurring business activity, based upon the facts of each case, using the following guidelines:

1. The type of activity. The type of activity, as opposed to the level of activity, that makes that dealer's remittance unusual for its particular business.

2. The focus of the dealer's business. A change in the dealer's business focus will not be considered nonrecurring business activity.

3. The number of occurrences. When the dealer's remittance amount continues to exceed the maximum amount allowed for a quarterly, semi-annual, or annual filing frequency, the remittance will not be considered nonrecurring.

4. Regularity. If the events are so regular that the amounts exceeding the maximum remittance amounts allowed for a quarterly, semi-annual, or annual frequency can be predicted, the remittance will not be considered nonrecurring.

(d)1. A dealer who maintains records on a period other than a monthly basis can request a variation from monthly filing and remittance of the tax by submitting a written request to the Florida Department of Revenue, Return Reconciliation, Building F-3, 5050 West Tennessee Street, Tallahassee, Florida 32399-0100. The written request must contain:

a. The name of the business;

b. The business mailing address;

c. The dealer's certificate of registration number;

d. A detailed explanation of the problems associated with filing on a monthly basis; and

e. The beginning and ending month, day, and year of each requested reporting period.

2. When the Executive Director or the Executive Director's designee determines that the information required for the making of an accurate return cannot reasonably be compiled by a taxpayer on a calendar month basis, the Executive Director or the Executive Director's designee will notify the dealer in writing that the deviation from monthly filing of returns and remitting of tax is authorized. Such payments and returns are due on the first day succeeding the end of the designated reporting period and become delinquent on the twenty-first day succeeding the end of the reporting period.

(e) Any dealer who operates two or more places of business in a single county for which returns are required to be filed with the Department may file a single return using a county control reporting number for all places of business located within a single county in lieu of separate returns for each place of business. The dealer may also use this method to file returns in more than one county. A dealer who wishes to report the amounts collected within each county in a single return may obtain a county control reporting number for each county in which returns are required to be filed by submitting a written request to the Florida Department of Revenue, Return Reconciliation, Building F-3, 5050 West Tennessee Street, Tallahassee, Florida 32399-0100. The written request must contain:

a. The name of the business;

b. The business mailing address;

c. Each county in which the dealer will be reporting using a county control reporting number; and

d. A list, by county, of each dealer's certificate of registration number.

(f) Any dealer who operates two or more places of business for which returns are required to be filed with the Department and maintains records for such places of business in a central office or place may file a consolidated return for all places of business in lieu of separate returns for each place of business. The consolidated return must clearly indicate the amounts collected within each county. An Application for Sales and Use Tax Consolidated Filing Number (form DR-1CON, incorporated by reference in Rule 12A-1.097, F.A.C.) is provided for qualifying dealers who wish to file consolidated returns. The Department will issue a consolidated account number to qualified dealers.

(g) Each dealer is required to file a return for each tax reporting period even when no tax is due for that reporting period.

(h) 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 is not authorized to extend the time for any dealer to file any return or pay any tax due.

(i) ~~(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) Penalties and interest will be assessed in the following manner on estimated tax liabilities for dealers who are eligible to file a consolidated return:

(a) In computing the penalty on a consolidated tax return, where the consolidated return provides the monthly business activity for each location or for each county, the 10 percent specific penalty for underpayment of estimated tax applies unless the dealer has paid the required estimated tax for his consolidated return as a whole without regard to each location. If the dealer fails to pay the required estimated tax for his consolidated return as a whole, each filing location shall stand on its own with respect to calculating these penalties and interest.

(b) When a dealer files a combined return for multiple locations within one county using only one registration number, the 10 percent specific penalty for underpayment of estimated tax shall be computed on the basis of a single return.

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

(a) Any local option sales tax, such as the tourist development tax levied under authority of s. 125.0104, F.S.; the tourist impact tax levied under the authority of s. 125.0108, F.S.; the convention development tax levied under authority of s. 212.0305, F.S.; or the discretionary sales surtaxes levied under authority of s. 212.055, F.S.

~~(b) The rental car surcharge levied under the authority of s. 212.0606, F.S.~~

~~(c) Any solid waste fee, such as the new tire fee levied under the authority of s. 403.718, F.S., or the lead acid battery fee levied under authority of s. 403.7185, F.S.~~

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

~~(4)(a) The Executive Director or the Executive Director's designee in Return Reconciliation is authorized to allow a dealer who is required to file returns and pay tax due on a monthly basis to divide a year into different reporting periods when such dealer has shown that he maintains his records on a period other than a monthly basis. A dealer requesting a variation from monthly filing and remitting of the tax due must direct such request to the Florida Department of Revenue, Return Reconciliation, Building F-3, 5050 West Tennessee Street, Tallahassee, Florida 32399-0100. The request must be in writing and shall provide:~~

- ~~1. A detailed explanation of the problems associated with filing on a monthly basis;~~
- ~~2. The beginning and ending day, month, and year of each respective reporting period;~~
- ~~3. The trade name of the business;~~
- ~~4. The business mailing address; and,~~
- ~~5. The dealer's certificate of registration number assigned by the Department of Revenue.~~

~~(b) If the Executive Director or the Executive Director's designee in Return Reconciliation determines that the information required for the making of an accurate return cannot reasonably be compiled by a taxpayer on a calendar month basis, the Executive Director or the Executive Director's designee in the Return Reconciliation will notify the dealer in writing that the deviation from monthly filing of returns and remitting of tax is authorized. Such returns shall be due and payable on the first day succeeding the end of the reporting period and shall be delinquent on the twenty-first day succeeding the end of the reporting period.~~

~~(2)(5)(a) COLLECTION ALLOWANCE.~~

~~(a) As compensation for the prescribed record keeping, accounting for, and remitting taxes or fees on the same documents utilized for sales and use tax, such seller, person, lessor, dealer, owner, and remitter shall be allowed a collection allowance.~~

~~(b) The collection allowance (except for dealers who make mail order sales, see subsection (5) of Rule 12A-1.103 12A-1.103(5), F.A.C.) shall be computed at the rate of 2.5 percent on the first \$1,200 of tax due. There shall be no additional collection allowance authorized for tax collected in excess of \$1,200. Therefore, the maximum amount of collection allowance authorized for any filing period shall be \$30.~~

~~2. Example: Dealer C files a return on August 20, 1992, for the month of July 1992. The collection allowance for that reporting period would be 2.5 percent of the first \$1,200 of tax with no additional collection allowance permitted on any amounts in excess of \$1,200.~~

~~(c) Dealers operating more than one place of business and filing under a consolidated tax return, where the consolidated return provides the monthly business activity for each location, are allowed the collection allowance for each reporting and registered location. Dealers who report tax collected within each county using a county-control number are However, a dealer filing a combined return for multiple locations using only one registration number shall be entitled to the collection allowance based upon the total amount reported on the county-control reporting number.~~

~~(d) The collection allowance will shall not be allowed when: if the tax is delinquent at the time of payment or where there is a manifest failure to maintain proper records or make proper prescribed reports:~~

- ~~1. The tax reported on the return is delinquent at the time of payment;~~
- ~~2. The required tax return is delinquent; or~~
- ~~3. The required tax return filed is incomplete. An "incomplete return" is a return that lacks such uniformity, completeness, and arrangement that the physical handling, verification, or review of the return, or determination of other taxes and fees reported on the return may not be readily accomplished.~~

~~(e) The collection allowance and other credits or deductions shall be applied proportionally to any other taxes reported on the same documents used for sale and use tax purposes:~~

~~(3) ESTIMATED TAX.~~

~~(a) Each dealer who paid sales and use tax for the preceding state fiscal year (July 1 through June 30) in an amount greater than \$200,000 is required to remit estimated tax, as provided in Section 212.11(4), F.S. The methods to calculate the dealer's estimated tax liability are provided in Section 212.11(1)(a), F.S.~~

~~(b) Any dealer who files a consolidated return to report the business activity of multiple places of business must calculate the estimated tax under one of the methods provided in Section 212.11(1)(a), F.S., for each county or each reporting location, and use the same method to calculate the estimated tax liability on the consolidated return as a whole.~~

~~(c) The following are not required to be included in computing the estimated tax liability:~~

- ~~1. Any local option sales tax, such as the tourist development tax levied under authority of Section 125.0104, F.S.; the tourist impact tax levied under the authority of Section 125.0108, F.S.; the convention development tax levied under authority of Section 212.0305, F.S.; or the discretionary sales surtaxes levied under authority of Section 212.055, F.S.~~

2. The rental car surcharge levied under the authority of Section 212.0606, F.S.

3. Any solid waste fee, such as the new tire fee levied under the authority of Section 403.718, F.S., or the lead-acid battery fee levied under authority of Section 403.7185, F.S.

4. The motor vehicle warranty fee levied under the authority of Section 681.117, F.S.

(d) A dealer engaged in the business of selling boats, motor vehicles, or aircraft that made at least one sale of a boat, motor vehicle, or aircraft with a sales price of \$200,000 or greater in the previous state fiscal year may qualify for the payment of estimated tax pursuant to Section 212.11(4)(d), F.S. To qualify, such dealer must apply annually to the Department, using a Boat, Motor Vehicle, or Aircraft Dealer Application for Special Estimation of Taxes (form DR-300400, incorporated by reference in Rule 12A-1.097, F.A.C.). The application must be delivered to the Department or be postmarked on or before October 1 of each year. The Department will grant to all qualified dealers the authority to pay estimated tax pursuant to Section 212.11(4)(d), F.S., for the following calendar year.

(e) Penalties – Failure to Pay Estimated Tax.

1. Any person who fails to timely remit the amount of estimated tax due under Section 212.11(4), F.S., is subject to a specific penalty of 10 percent of any unpaid estimated tax.

2. Any dealer who files a consolidated tax return and fails to timely remit the amount of estimated tax due based on the consolidated return as a whole, without regard to each business location, is subject to the specific penalty of 10 percent of any unpaid estimated tax. The specific penalty will be calculated based on any unpaid estimated tax due for each reporting business location.

(4) PENALTIES AND INTEREST.

(a) The penalties and interest provided in this subsection apply to the following sales and use taxes, discretionary sales surtax, surcharges, or fees imposed by or administered under Chapter 212, F.S.:

1. Apalachicola Bay oyster surcharge;
2. Convention development tax;
3. Discretionary sales surtax;
4. Lead-acid battery fee;
5. Miami-Dade County Lake Belt mitigation fee;
6. Motor vehicle warranty fee (lemon law fee);
7. Rental car surcharge;
8. Sales and use tax;
9. Tax on gross receipts on dry-cleaning;
10. Tax on perchloroethylene;
11. Tourist development tax;
12. Tourist impact tax; and
13. Waste tire fee.

(b) Failure to Timely File a Return. Any person who fails to timely file any return that is required to report any tax, surtax, surcharge, or fee imposed by or administered under

Chapter 212, F.S., is subject to a specific penalty of 10 percent of the amount of tax, surtax, surcharge, or fee shown on the return. This specific penalty may not be less than \$50 for each reporting business location.

(c) Failure to Timely Pay. Any person who fails to timely pay any tax, surtax, surcharge, or fee imposed by or administered under Chapter 212, F.S., shown due on a return is subject to a specific penalty of 10 percent of the amount of the tax, surtax, surcharge, or fee shown due on the return. This specific penalty may not be less than \$50 for each reporting business location.

(d) Failure to Timely to File a Return and to Timely Pay. Any person who files a required return with the Department, but fails to file such return on or before the due date, and fails to timely pay the tax, surtax, surcharge, or fee shown due on the return, is subject to only one specific penalty of 10 percent of the tax, surtax, surcharge, or fee shown due on the return. This specific penalty may not be less than \$50 for each reporting business location.

(e) Consolidated Returns and Reporting by County-Control Numbers. The specific penalty for failure to timely file a tax, surtax, surcharge, or fee return, or for failure to timely pay the tax, surcharge, surtax, or fee shown due on a return, is calculated based on each reporting business location. The \$50 minimum applies to each reporting business location.

(f) Failure to Disclose. Any person required to make a return or to pay any tax, surtax, surcharge, or fee imposed by or administered under Chapter 212, F.S., who fails to disclose the tax, surtax, surcharge, or fee on a return, is subject to a specific penalty in the amount of 10 percent of the unpaid tax, surtax, surcharge, or fee for each 30 days, or fraction thereof, while the failure to disclose the tax, surtax, surcharge, or fee due continues. This specific penalty may not exceed a total of 50 percent of any such unpaid tax, surtax, surcharge, or fee.

(6) 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 is not authorized to extend the time for any dealer to file any return or pay any tax due.

(g)(7)(a) Interest shall accrue on any delinquent sales or use tax, surtax, surcharge, or fee imposed by or administered under Chapter 212, F.S., at the following rate:

1. One percent per month (prorated daily using the daily factor of .000328767) for payments due prior to January 1, 2000.

2. For payments due on or after January 1, 2000, the rate of interest established pursuant to Section 213.235, F.S., and Rule 12-3.0015, F.A.C. (prorated daily).

3. Interest accrues on the amount due from the date of delinquency until the date on which the tax is paid.

(b) Interest shall accrue for the failure to timely remit the proper estimated tax liability at the following rate:

1. ~~One percent per month (prorated daily using the daily factor of .000328767) for estimated tax due prior to January 1, 2000.~~

2. ~~For payments due on or after January 1, 2000, the rate of interest established pursuant to Section 213.235, F.S., and Rule 12 3.0015, F.A.C. (prorated daily.)~~

3. ~~Interest accrues on the amount due from the date of delinquency until the date on which the tax is paid.~~

~~(8) In computing the minimum delinquent penalty on a consolidated tax return, where the consolidated return provides the monthly business activity for each location or for each county, the \$10 minimum delinquent penalty applies to each reporting and registered location. However, when a dealer files a combined return from multiple locations in a single county, using only one registration number, the minimum delinquent penalty shall be computed on the basis of a single return.~~

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), 212.031(3), 212.04(3), (4), 212.0506(4), (11), 212.055, 212.06(1)(a), 212.0606, 212.11, 212.12(1), (2), (3), (4), (5), 212.14(2), 212.15(1), ~~213.235, 213.755, 370.07(3), 373.41492, 376.70, 376.75, 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, 4-17-03, _____.

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

(1) No change.

~~(2)(a) Tangible personal property purchased exclusively for leasing purposes by a dealer registered with the Department at the time of purchase may be purchased tax-exempt; providing the lessor is registered with the Department as a dealer at the time of purchase and issues the vendor a valid resale certificate in lieu of tax. The purchasing dealer is required to issue a copy of the dealer's Annual Resale Certificate to the selling dealer at the time of purchase in lieu of paying tax, as provided in Rule 12A-1.039, F.A.C. Any purchases made prior to the time of registration as a dealer are subject to tax.~~

(b) No change.

~~2. In the case of commercial motor vehicles having a gross weight of 10,000 pounds or more which are self propelled or towed and used on the public highways in commerce to transport persons or cargo, when the term of the lease or rental to the initial lessee is for a period of 12 months or more, the owner/lessor may pay the Florida tax on the acquisition of the motor vehicle. In such cases, the rental to the initial lessee and renewals thereof to the same lessee are not subject to the rental tax. The rental of the same commercial motor vehicle to subsequent lessees by the owner/lessor is taxable.~~

(3) through (7) No change.

(8) Repair parts purchased for use in the maintenance of tangible personal property used exclusively for leasing purposes are exempt when purchased by the lessor. When purchased by the lessee, they are taxable. Charges by the lessor

to a lessee for repairing property which is not a part of the lease contract are taxable. Charges to the lessee by a third party for repairing the leased property are taxable. ~~(See Rule 12A-1.007 for repairs to leased motor vehicles.)~~

(9) through (47) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(1), (4), (10)(g), (12), (14)(a), (15)(a), (16), (19), 212.04, 212.05(1)(c), (d), (f), (h), (i), 212.06(1)(a), (2)(e), (8), 212.08(7)(e), (f), (v), (y), 212.11(2), (3), 212.12(9), 212.18(2), 402.61 FS. History—Revised 10-7-68, 1-7-70, 6-16-72, Amended 12-11-74, 12-31-81, 7-20-82, Formerly 12A-1.71, Amended 1-2-89, 10-5-92, 11-16-93, 8-15-94, 10-17-94, 3-20-96, 8-1-02, 6-12-03, _____.

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) Copies of these forms, except those denoted by an asterisk (*), 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 45) calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or 56) downloading selected forms from the Department's Internet site at the address shown inside the parentheses (www.myflorida.com /dor).~~ Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.

(b) No change.

Form Number	Title	Effective Date
(2)(a) DR-1	Application to Collect and/or Report Tax in Florida (R. 01/04 01/03)	____ 04/03
(b) DR-1CON	Application for Sales and Use Tax Consolidated Filing Number (R. 03/04)	_____
(3)	No change.	
(4) DR-5	Application for Consumer's Certificate of Exemption with Instructions (R. 11/03 02/03)	____ 04/03
(5)(a) DR-7	Consolidated Sales and Use Tax Return (R. 01/04 01/03)	____ 04/03
(b) DR-7N	Instructions for Consolidated Sales and Use Tax Return (R. 01/04 01/03)	____ 04/03

- (6)(a) DR-15 Sales and Use Tax Return
(R. ~~01/04 01/03~~) _____ ~~04/03~~
- (b) DR-15CS Sales and Use Tax Return
(R. ~~01/04 01/03~~) _____ ~~04/03~~
- (c) DR-15CSN DR-15 Sales and Use
Tax Returns Instructions
for ~~2004 2003~~ (R. ~~01/04 01/03~~) _____ ~~04/03~~
- (d) DR-15EZ Sales and Use Tax Return
(R. ~~01/04 01/02~~) _____ ~~08/02~~
- (e) DR-15EZN Instructions for ~~2004 2002~~
DR-15EZ Sales and Use
Tax Returns (R. ~~01/04 01/02~~) _____ ~~08/02~~
- (f) through (g) No change.
- (h) DR-15N Instructions for ~~2004 2003~~
DR-15 Sales and Use Tax
Returns (R. ~~01/04 01/03~~) _____ ~~04/03~~
- (i) through (n) No change.
- (7) through (21) No change.
- (22) DR-300400 Boat, Motor Vehicle, or
Aircraft Dealer Application
for Special Estimation of
Taxes (R. 06/99) _____
- (23)(22) No change.

Specific Authority 201.11, 202.17(3)(a), 202.22(6), 202.26(3), 212.0515(7), 212.07(1)(b), 212.08(5)(b)4.,(7), 212.11(5)(b), 212.12(1)(b)2., 212.17(6), 212.18(2),(3), 213.06(1), 376.70(6)(b), 376.75(9)(b), 403.718(3)(b), 403.7185(3)(b), 443.171(2),(7) F.S. Law Implemented 92.525(1)(b),(3), 95.091, 125.0104, 125.0108, 201.01, 201.08(1)(a), 201.133, 201.17(1)-(5), 202.11(2),(3),(6),(16),(24), 202.17, 202.22(3)-(6), 202.28(1), 203.01, 212.02, 212.03, 212.0305, 212.031, 212.04, 212.05, 212.0501, 212.0515, 212.054, 212.055, 212.06, 212.0606, 212.07(1),(8),(9), 212.08, 212.084(3), 212.085, 212.09, 212.096, 212.11(1),(4),(5), 212.12(1),(2),(9),(13), 212.13, 212.14(5), 212.17, 212.18(2),(3), 213.235, 213.29, 213.37, 219.07, 288.1258, 376.70, 376.75, 403.717, 403.718, 403.7185, 443.036, 443.121(1),(3), 443.131, 443.1315, 443.1316, 443.171(2),(7) 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, 4-17-03, 5-4-03, 6-12-03, 10-1-03,_____

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, (850)922-9408 or (850)922-4729

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Buzz McKown, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4721

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 25, 2004

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 May 21, 2004 (Vol. 30, No. 21, pp. 2064-2072). A rule development workshop was held on June 7, 2004. No one

appeared to provide comment regarding these proposed rule changes. No written comments have been received by the Department.

DEPARTMENT OF REVENUE

Sales and Use Tax

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

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-12.004, F.A.C. (Reporting and Remitting Fees), is to: (1) consolidate guidelines for penalties and interest imposed on the fees levied on new tires and lead-acid batteries sold at retail, which are administered under Chapter 212, F.S., into subsection (4) of Rule 12A-1.056, F.A.C.; and (2) provide guidelines for filing returns to report the new tire fee and the lead-acid battery fee.

SUMMARY: The proposed amendments to Rule 12A-12.004, F.A.C.: (1) provide guidelines to taxpayers who operate two or more places of business in a single county on how to report the new tire fee and the lead-acid battery fee when the taxpayer has obtained a county control number for reporting sales and use tax; (2) provide guidelines to taxpayers who operate in two or more counties on how to report the new tire fee and the lead-acid battery fee when the taxpayer has obtained a consolidated reporting number for reporting sales and use tax; (3) provide that returns are required for each reporting period even when no fee is due for that reporting period; (4) provide that guidelines for penalties and interest imposed on the fees levied on new tires and lead-acid batteries sold at retail, which are administered under Chapter 212, F.S., are provided in subsection (4) of Rule 12A-1.056, F.A.C.; and (5) remove provisions from Rule 12A-12.004, F.A.C., that would be redundant of subsection (4) of Rule 12A-1.056, F.A.C., as amended.

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: 212.12(2), 213.755, 403.718, 403.7185 FS.

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

TIME AND DATE: 9:00 a.m., August 2, 2004

PLACE: Room 118, Carlton Building, 501 South Calhoun Street, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before Technical Assistance and Dispute Resolution is asked to advise the Department at least 48 hours before such proceeding by contacting: Larry Green, (850)922-4830. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, 1(800)955-8770 (Voice) and 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Gary Gray, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4729

THE FULL TEXT OF THE PROPOSED RULE IS:

12A-12.004 Reporting and Remitting Fees.

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

(c) Any dealer who operates two or more places of business in a single county for which returns are required and who has obtained a county control reporting number from the Department for purposes of reporting sales and use tax must report the new tire fee and the lead-acid battery fee for all places of business located within a single county return using the county control reporting number.

(d) Any dealer who operates places of business in two or more counties for which returns are required and who has obtained a consolidated reporting number from the Department for purposes of reporting sales and use tax must report the new tire fee and the lead-acid battery fee for all places of business using the consolidated reporting number.

(e) For information on how to obtain a county control reporting number or a consolidated reporting number for purposes of sales and use tax, see subsection (1) of Rule 12A-1.056, F.A.C.

(f) Each dealer is required to file a return for each reporting period even when no fee is due for that reporting period.

~~(g)(e)~~ No change.

(2) No change.

~~(3)(a) Interest on delinquent fees shall be at the following rate:~~

~~1. One percent per month (prorated daily using the daily factor of .000328767) for payments due prior to January 1, 2000.~~

~~2. For payments due on or after January 1, 2000, the rate of interest established pursuant to Section 213.235, F.S., and Rule 12-3.0015, F.A.C. (prorated daily).~~

~~(b) Interest accrues based upon the amount of the fee no paid from the date the fee is due until the fee is paid.~~

~~(3)(4)~~ Persons who are required to make a return or to pay fees imposed by Sections 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 Section 212.12(2), F.S., and to the interest imposed on deficiencies established under Section 213.235, F.S., and Rule 12-3.0015, F.A.C. Guidelines are provided in subsection (4) of Rule 12A-1.056, F.A.C.

Specific Authority 212.17(6), 212.18(2), 213.06(1), 403.718(3)(b), 403.7185(3)(b) FS. Law Implemented 212.12(2), 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, 4-17-03, _____.

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, (850)922-4729

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Buzz McKown, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4721

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 25, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed amendments to Rule 12A-12.004, F.A.C. (Reporting and Remitting Fees), were noticed for a rule development workshop in the Florida Administrative Weekly on May 21, 2004 (Vol. 30, No. 21, pp. 2072-2073). A rule development workshop was held on June 7, 2004. No one appeared to provide comment regarding these proposed rule changes. No written comments have been received by the Department.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE CHAPTER TITLE: Apalachicola Bay Oyster Surcharge

RULE CHAPTER NO.: 12A-14

RULE TITLE: Reporting and Remitting the Surcharge

RULE NO.: 12A-14.002

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-14.002, F.A.C. (Reporting and Remitting the Surcharge), is to: (1) adopt, by reference, changes to the form used by the Department in the administration of the oyster surcharge; (2) provide that the failure of any dealer to secure a return for reporting the surcharge does not relieve the dealer from the requirement to file a return or to remit surcharge due; and (3) consolidate guidelines for penalties and interest imposed on the tax levied on the surcharge, which is administered under Chapter 212, F.S., into subsection (4) of Rule 12A-1.056, F.A.C.

SUMMARY: The proposed amendments to Rule 12A-14.002, F.A.C.: (1) adopt, by reference, changes to the form used by the Department in the administration of the oyster surcharge; (2) remove provisions for which Rule 12A-1.056, F.A.C., applies

in its entirety to the oyster surcharge; (3) provide technical changes on guidelines for obtaining forms from the Department; (4) remove guidelines regarding estimated tax and the collection allowance that are provided in Rule 12A-1.056, F.A.C.; (5) provide that the failure of any dealer to secure a return for reporting the surcharge does not relieve the dealer from the requirement to file a return or to remit surcharge due; (6) provide that guidelines for penalties and interest imposed on the tax levied on the surcharge, which is administered under Chapter 212, F.S., are provided in subsection (4) of Rule 12A-1.056, F.A.C.; and (7) remove provisions from Rule 12A-14.002, F.A.C., that would be redundant of subsection (4) of Rule 12A-1.056, F.A.C., as amended.

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), 370.07(3) FS.

LAW IMPLEMENTED: 212.12(2), 213.235(2), 213.755, 376.70(3) FS.

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

TIME AND DATE: 9:00 a.m., August 2, 2004

PLACE: Room 118, Carlton Building, 501 South Calhoun Street, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before Technical Assistance and Dispute Resolution is asked to advise the Department at least 48 hours before such proceeding by contacting: Larry Green, (850)922-4830. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, 1(800)955-8770 (Voice) and 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Gary Gray, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4729

THE FULL TEXT OF THE PROPOSED RULE IS:

12A-14.002 Reporting and Remitting the Surcharge.

~~(1) Except as stated in this rule, the requirements of Rule 12A-1.056, F.A.C., are applicable to the reporting and remitting of the oyster surcharge.~~

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

(b) The surcharge shall be reported on Form DR-15-O, the Apalachicola Bay Oyster Surcharge Return (R. 09/03 Form DR-15-O) ~~dated December, 1994,~~ which is hereby incorporated by reference in this rule. Copies of this form are available, without cost, by one or more of the following methods: 1) writing the Florida Department of Revenue, Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304; or, 2) faxing the Distribution Center at (850)922-2208; or, 3) ~~using a fax machine telephone handset to call the Department's automated Fax on Demand system at (850)922-3676; or,~~ 4) visiting any local Department of Revenue Service Center to personally obtain a copy; or, ~~45~~ 5) calling the Forms Request Line during regular office hours at (800)352-3671 ~~(in Florida only)~~ or (850)488-6800; or, ~~56~~ 6) downloading selected forms from the Department's Internet site at the address shown inside the parentheses (www.myflorida.com/dor). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.

~~(3) The estimated tax calculation requirement shall not apply to the surcharge.~~

~~(4) A dealer's collection allowance for filing a timely return is not allowed.~~

~~(2)(5) The failure of any dealer to secure a return for reporting the surcharge does not relieve the dealer from the requirement to file a return or to remit surcharge due to the Department. The As stated in subsection 12A-1.056(8), F.A.C., with reference to taxes, the Department is not authorized to extend the time to make any return or to pay the surcharge.~~

(3) Persons who are required to make a return or to pay the surcharge imposed under Section 370.07(3), 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 Section 212.12(2), F.S., and to the interest imposed on deficiencies established under Section 213.235, F.S., and Rule 12-3.0015, F.A.C. Guidelines are provided in subsection (4) of Rule 12A-1.056, F.A.C.

~~(6)(a) Interest shall accrue on any delinquent return at the following rate:~~

~~1. One percent per month (prorated daily using the daily factor of .000328767) for payments due prior to January 1, 2000:~~

~~2. For payments due on or after January 1, 2000, the rate of interest established pursuant to s. 213.235, F.S., and Rule 12-3.0015, F.A.C., (prorated daily):~~

~~(b) Interest accrues on the amount due from the date of delinquency until the date on which the surcharge is paid.~~

Specific Authority 212.17(6), 212.18(2), 213.06(1), 370.07(3) FS. Law Implemented 212.12(2), 213.235, 213.755, 370.07(3) FS. History--New 10-16-89, Amended 3-21-95, 3-20-96, 4-2-00, _____.

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, (850)922-4729

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Buzz McKown, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4721

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 25, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed amendments to Rule 12A-14.002, F.A.C. (Reporting and Remitting the Surcharge), were noticed for a rule development workshop in the Florida Administrative Weekly on May 21, 2004 (Vol. 30, No. 21, pp. 2073-2074). A rule development workshop was held on June 7, 2004. No one appeared to provide comment regarding these proposed rule changes. No written comments have been received by the Department.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Rental Car Surcharge	12A-16
RULE TITLES:	RULE NOS.:
Imposition and Payment of the Surcharge	12A-16.002
Surcharge Returns and Filing Requirements	12A-16.006
Public Use Forms	12A-16.008

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-16.002, F.A.C. (Imposition and Payment of the Surcharge), is to: (1) reorganize for easier reading guidelines regarding the collection and remittance of the rental car surcharge; and (2) provide guidelines for when a renewal or extension of a lease will constitute a new lease for purposes of the imposition of the rental car surcharge.

The purpose of the proposed amendments to Rule 12A-16.006, F.A.C. (Surcharge Returns and Filing Requirements), is to: (1) implement the provisions of Section 18, Ch. 2003-254, L.O.F., which require dealers to report the surcharge revenues attributed to the county where the rental agreement was entered into; (2) provide guidelines and requirements regarding the reporting of the rental car surcharge; and (3) consolidate guidelines for penalties and interest imposed on the rental car surcharge into subsection (4) of Rule 12A-1.056, F.A.C.

The purpose of the proposed amendments to Rule 12A-16.008, F.A.C. (Public Use Forms), is to adopt, by reference, new forms and changes to forms used by the Department in the administration of the rental car surcharge.

SUMMARY: The proposed amendments to Rule 12A-16.002, F.A.C.: (1) reorganize for easier reading provisions regarding the requirement for dealers to collect and remit the rental car surcharge; (2) provide that any person engaged in the business

of leasing or renting for hire passenger motor vehicles is required to collect the rental car surcharge when the lease or rental payments are to be paid under the terms of the lease or rental agreement; (3) provide guidelines for when a renewal or extension of a lease will constitute a new lease for purposes of the imposition of the rental car surcharge; (4) provide when the lease or rental of a for hire passenger motor vehicle is subject to the surcharge for vehicles leased or rented for less than 12 months and for those leased or rented for more than 12 months; and (5) provide technical changes.

The proposed amendments to Rule 12A-16.006, F.A.C.: (1) implement the provisions of s. 18, Ch. 2003-254, L.O.F., which require dealers to report the surcharge revenues attributed to the county where the rental agreement was entered into; (2) define the phrase “where the rental agreement was entered into”; (3) provide which forms the Department uses in its administration of the rental car surcharge; (4) provide guidelines to dealers who have obtained a consolidated reporting number or a county control reporting number on how to file returns for purposes of the rental car surcharge; (5) provide that dealers registered as out-of-state dealers and dealers who report for locations in two or more counties are required to file a schedule to report the number of days, by county, that all for hire passenger motor vehicles were leased or rented during the month; (6) provide that a return is required to be filed when no tax is due, but the rental car surcharge schedule is not required to be filed; (7) provide that guidelines for penalties and interest imposed on the rental car surcharge are provided in subsection (4) of Rule 12A-1.056, F.A.C.; and (8) remove provisions from Rule 12A-16.006, F.A.C., that would be redundant of subsection (4) of Rule 12A-1.056, F.A.C., as amended.

The proposed amendments to Rule 12A-16.008, F.A.C., is to adopt, by reference, new forms and changes to forms used by the Department in the administration of the rental car surcharge.

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: 212.05(1)(c), 212.06(1)(a), 212.0606, 212.07(2),(4),(8), 212.11, 212.12(2),(3),(4), 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: 9:00 a.m., August 2, 2004

PLACE: Room 118, Carlton Building, 501 South Calhoun Street, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before Technical Assistance and Dispute Resolution is asked to advise the Department at least 48 hours before such proceeding by contacting: Larry Green, (850)922-4830. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, 1(800)955-8770 (Voice) and 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Gary Gray, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4729

THE FULL TEXT OF THE PROPOSED RULES IS:

12A-16.002 Imposition and Payment of the Surcharge.

~~(1)(a)~~ The lease or rental in Florida of a for hire passenger motor vehicle is subject to a surcharge of \$2.00 per day or any part of a day, or any part thereof, regardless of whether the vehicle is licensed in Florida. ~~For the purposes of this rule, one day is defined as 24 consecutive hours.~~

(b) Each person engaged in the business of leasing or renting for hire passenger motor vehicles is required to collect the rental car surcharge when the lease or rental payments are to be paid under the terms of the lease or rental agreement.

(2) For the purposes of this rule chapter, the following definitions will apply:

(a) The term "day" means 24 consecutive hours.

~~(b)2.~~ No change.

~~(3)(b)~~ The surcharge applies to each lease or rental of a for hire passenger motor vehicle, specified in the lease or rental agreement, on the first thirty (30) days the vehicle is continuously leased or rented to one lessee or renter.

~~(a)~~ If a for hire passenger motor vehicle is leased or rented to one lessee or renter under an agreement for thirty (30) continuous days or fewer, or for an unspecified continuous duration, the surcharge is due shall be collected and remitted on the lease or rental payments for due up to the first thirty (30) days of the lease or rental period. ~~If the lease or rental agreement is renewed at any time for an additional period, the renewal constitutes a new lease or rental and, therefore, the surcharge is due until thirty (30) continuous days is reached on the renewed lease or rental agreement.~~

~~2.~~ If a for hire passenger motor vehicle is leased or rented to one lessee or renter under an agreement for a specific duration, in excess of thirty (30) continuous days, the surcharge shall be collected and remitted on lease or rental payments due for thirty (30) continuous days. ~~If the lease or rental agreement is renewed for an additional period, the~~

~~renewal constitutes a new lease or rental and, therefore, the surcharge is due until the thirty (30) continuous day maximum is reached on the renewed lease or rental agreement.~~

(b) When the terms of a lease or rental agreement authorize the lessee to extend the lease or rental beyond the initial lease term without executing an additional lease or agreement and without any action on the part of the lessor, the extension period will not be considered a new lease or rental.

(c) When the terms of a lease or rental agreement require the lessee to execute an additional lease or agreement or require any action on the part of the lessor, the additional days during the extension period will be considered a new lease or rental.

(4)(a) Motor Vehicle Leased or Rented for Less Than 12 Months.

1. When a for hire passenger motor vehicle is leased or rented in Florida, the lease or rental is subject to the rental car surcharge, even though the vehicle may be driven to another state or the lease or rental payment may be made outside Florida.

2. When a for hire passenger motor vehicle is leased or rented outside Florida, the lease or rental is not subject to the rental car surcharge, even though the vehicle may be driven into Florida or the lease or rental payment may be made in Florida.

(b) Motor Vehicle Leased or Rented for 12 Months or Longer.

1. When a for hire passenger motor vehicle is leased or rented in Florida for a term of 12 months or longer, the rental car surcharge is due.

2. When a for hire passenger motor vehicle is leased or rented outside Florida for a term of 12 months or longer and the vehicle is registered, licensed, or titled in Florida, it is presumed subject to the rental car surcharge. This presumption may be rebutted only by documentary evidence that the vehicle was used outside Florida continuously for the first thirty (30) days before being brought into Florida.

~~(5)(2)(a)~~ A person engaged in the business of leasing or renting for hire passenger motor vehicles shall not advertise or hold out to the public in any manner, directly or indirectly, that ~~the dealer he~~ will absorb all or any part of the rental car surcharge, ~~or that he will~~ relieve the lessee or renter of the payment of all or any part of the surcharge, or that, when added to the lease or rental price, the surcharge or any part thereof will be refunded either directly or indirectly by any method whatsoever.

(b) The amount of the rental car surcharge is required to shall be separately stated on any charge ticket, invoice, or other tangible evidence of lease or rental, and will shall be a debt from the lessee or renter to the dealer until paid.

(c) The rental car surcharge is subject to sales and use tax.

~~(3)(a) Each person engaged in the business of leasing or renting for hire passenger motor vehicles is required to collect and remit the surcharge.~~

~~(b) The surcharge is due and payable when the lease or rental payments are to be made by the lessee or renter as they accrue under the terms of the lease or rental agreement.~~

~~(c) When the term of the lease or rental agreement is for less than twelve (12) months:~~

~~1. If the lease or rental of a for hire passenger motor vehicle, leased or rented in another state and driven into Florida, is paid in Florida, the surcharge applies. If a credit card is used in lieu of cash payments, the Florida dealer honoring the credit card is liable for the collection and remittance of the surcharge.~~

~~2. If the lease or rental of a for hire passenger motor vehicle leased in Florida and driven to another state is paid in the other state, the lease or rental is not subject to the surcharge. If a motor vehicle is leased or rented in Florida and the lease or rental is paid in Florida, the surcharge applies even though the motor vehicle is removed from Florida while the lessee or renter has the vehicle.~~

~~(d)1. When the term of a lease or rental is for twelve (12) months or more and the vehicle is leased or rented in Florida, the surcharge is due and payable when the vehicle is registered, licensed, or titled in this state, regardless of where the vehicle is to be used.~~

~~2. When the term of a lease or rental is for twelve (12) months or more and the vehicle is leased or rented from a person outside this state, it is presumed subject to the surcharge if it is registered, licensed, or titled in this state. This presumption may be rebutted only by documentary evidence that the vehicle was used outside this state continuously for thirty (30) days or more before it was brought into this state.~~

~~(6)(4) Any person who has leased or rented a for hire passenger motor vehicle and cannot prove that the rental car surcharge has been paid to the his lessor or other person will shall be directly liable to the state for any surcharge, interest, or penalty due on such transaction.~~

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.05(1)(c), 212.06(1)(a), 212.0606, 212.06(1)(a), 212.07(2), (4), (8)(9) FS. History—New 11-14-89, Amended 7-7-91, 5-19-93, 3-20-96, _____.

12A-16.006 Surcharge Returns and Filing Requirements.

(1)(a) Any dealer who collects the rental car surcharge is required to report to the Department all surcharge revenues that are attributed to the county where the rental agreement was entered into. For purposes of this rule, “where the rental agreement was entered into” means the county where the lessee picks up the for hire passenger motor vehicle. For example, a motor vehicle is picked up in Florida County A and dropped off in Florida County B. The surcharge revenues are attributed to Florida County A.

~~(b)(a)~~ Except as provided in Rule Chapter 12-24, F.A.C., the surcharge for each month shall be due to the Department 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. The payment and return must be delivered to the Department 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 the 20th day falls on a Saturday, Sunday, or 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 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.

~~(c)(b)~~ The rental car surcharge is required to be reported shall be remitted to the Department of Revenue on a Solid Waste and Surcharge Return (Form DR-15SW), incorporated by reference in Rule 12A-16.008, F.A.C. A Rental Car Surcharge Schedule (Form DR-15SWS) is used to report the number of days that all for hire passenger motor vehicles were leased or rented during the month by county. Forms DR-15SW and DR-15SWS are incorporated by reference in Rule 12A-16.008, F.A.C.

~~(d)~~ Any dealer who operates places of business in two or more counties for which returns are required and who has obtained a consolidated reporting number from the Department for purposes of reporting sales and use tax must report the rental car surcharge for all places of business using the consolidated reporting number. The dealer is required to file a consolidated Solid Waste and Surcharge Return (Form DR-15SW) with a Rental Car Surcharge Schedule (Form DR-15SWS) to report the number of days that all for hire passenger motor vehicles were leased or rented during the month for each county.

~~(e)~~ Any dealer who operates two or more places of business in a single county for which returns are required and who has obtained a county control reporting number from the Department for purposes of reporting sales and use tax must report the rental car surcharge for all places of business located within a single county using the county control reporting number. Such dealers are reporting the rental car surcharge attributed to that county and are not required to file a Rental Car Surcharge Schedule (Form DR-15SWS).

(f) Out-of-state dealers who have no physical place of business located within Florida that are required to report the rental car surcharge must file a Solid Waste and Surcharge Return (Form DR-15SW) with a Rental Car Surcharge Schedule (Form DR-15SWS) to report the number of days that all for hire passenger motor vehicles were leased or rented during the month for each county. The Rental Car Surcharge Schedule must be included with the return even when the dealer reports the number of days that all for hire passenger motor vehicles were leased or rented during the month for a single county.

(g) For information on how to obtain a county control reporting number or a consolidated reporting number for purposes of sales and use tax, see subsection (1) of Rule 12A-1.056, F.A.C.

(h) Each dealer is required to file a return each month, even when no rental car surcharge is due for that month. However, a dealer is not required to file a Rental Car Surcharge Schedule (Form DR-15SWS) when no rental car surcharge is due for that month.

(i)(e) 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)(a) Any dealer who operates two (2) or more places of business for which Solid Waste and Surcharge Returns (Form DR-15SW) are required to be filed and maintains records for such places of business in a central office or place shall have the privilege on each reporting date of filing a consolidated return for all such places of business in lieu of separate returns for each such place of business.

(b) A dealer electing to file a consolidated Solid Waste and Surcharge Return (Form DR-15SW) shall make an election request in writing, setting out the trade name of the business, mailing address of the business, location address of the business, the Florida sales and use tax certificate of registration number of each business location, and the effective date of the election to file a consolidated return.

(c) The request must be addressed to the Department of Revenue, Return Reconciliation, Building F-3, 5050 W. Tennessee Street, Tallahassee, Florida 32399-0100. All requests must be received by the Department before the surcharge return for which election is made becomes delinquent.

(3)(a) Interest shall accrue on any delinquent surcharge at the following rate:

1. One percent per month (prorated daily using the daily factor of .000328767) for payments due prior to January 1, 2000.

2. For payments due on or after January 1, 2000, the rate of interest established pursuant to Section 213.235, F.S., and Rule 12-3.0015, F.A.C. (prorated daily).

(b) Interest accrues on the amount due from the date of delinquency until the surcharge is paid.

(2)(4) Persons who are required to make a return or to pay the rental car surcharge fees imposed by Section 212.0606, F.S., and fail to do so will be subject to penalties, as provided in Section 212.12(2), F.S., and to the interest imposed on deficiencies established under Section 213.235, F.S., and Rule 12-3.0015, F.A.C. Guidelines are provided in subsection (4) of Rule 12A-1.056, F.A.C.

(5) In computing the minimum delinquent penalty on a consolidated surcharge return, the \$10 minimum delinquent penalty applies to each reporting location. However, when a person required to remit the surcharge files a combined return for multiple locations in a single county, using only one registration number, the minimum delinquent penalty shall be computed on the basis of a single return.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.0606, 212.11, 212.12(2),(3),(4), 213.235, 213.755 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, 4-17-03, _____.

12A-16.008 Public Use Forms.

(1)(a) No change.

(1)(a) The 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 rental car 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, Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304; or, 2) faxing the Distribution Center at (850)922-2208; or, 3) using a fax machine telephone handset to call the Department's automated Fax on Demand system at (850)922-3676; or, 3)4) visiting any local Department of Revenue Service Center to personally obtain a copy; or, 4)5) calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or, 5)6) downloading selected forms from the Department's Internet site at the address shown inside the parentheses (www.myflorida.com/dor). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.

Form Number	Title	Effective Date
(2) DR-15SW	Solid Waste and Surcharge Return (R. 04/03 04/02)	04/03
(3) DR-15SWN	Instructions for Completing the DR-15SW Solid Waste and Surcharge Return (R. 09/03 07/01)	01/02
(4) DR-15SWS	Rental Car Surcharge Schedule (N. 01/04)	

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, 4-17-03, _____.

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, (850)922-4729

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Buzz McKown, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4721

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 25, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed amendments to Rule Chapter 12A-16, (Rental Car Surcharge), were noticed for a rule development workshop in the Florida Administrative Weekly on May 21, 2004 (Vol. 30, No. 21, pp. 2074-2078). A rule development workshop was held on June 7, 2004. No one appeared to provide comment regarding these proposed rule changes. No written comments have been received by the Department.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE CHAPTER TITLE: Registration as Secondhand Dealer or Secondary Metals Recycler
 RULE TITLE: Public Use Forms
 RULE CHAPTER NO.: 12A-17
 RULE NO.: 12A-17.005

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-17.005, F.A.C. (Public Use Forms), is to: (1) adopt, by reference, changes to a form used by the Department in the administration of the registration of secondhand dealers and secondary metals recyclers; and (2) provide technical changes on guidelines for obtaining forms from the Department.

SUMMARY: The proposed amendments to Rule 12A-17.005, F.A.C.: (1) adopt, by reference, changes to Form DR-1S, Application for Secondhand Dealer or Secondary Metals Recycler Registration; and (2) provide technical changes on guidelines for obtaining forms from 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), 538.11 FS.

LAW IMPLEMENTED: 212.17(6), 212.18(2), 213.06(1), 538.09, 538.11, 538.25 FS.

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

TIME AND DATE: 9:00 a.m., August 2, 2004

PLACE: Room 118, Carlton Building, 501 South Calhoun Street, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before Technical Assistance and Dispute Resolution is asked to advise the Department at least 48 hours before such proceeding by contacting: Larry Green, (850)922-4830. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, 1(800)955-8770 (Voice) and 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Gary Gray, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4729

THE FULL TEXT OF THE PROPOSED RULE IS:

12A-17.005 Public Use Forms.

The following public-use forms and instructions are employed by the Department in its dealings with the public in administering Ch. 538, F.S., and are incorporated by reference in this rule. Copies of these forms are available, without cost, by one or more of the following methods: 1) writing the Florida Department of Revenue, Forms Distribution Center, 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 4 ~~5~~) calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or 5 ~~6~~) downloading selected forms

from the Department’s Internet site at the address shown inside the parentheses (www.myflorida.com/dor). Persons with hearing or speech impairments may call the Department’s TDD at (800)367-8331.

Form Number	Title	Effective Date
(1) DR-1S	Application for Secondhand Dealer or Secondary Metals Recycler Registration (R. 08/03 06/02)	____ 08/02
(2) No change.		

Specific Authority 212.17(6), 212.18(2), 213.06(1), 538.11 FS. Law Implemented 212.17(6), 212.18(2), 213.06(1), 538.09, 538.11, 538.25 FS. History—New 3-15-90, Amended 11-14-91, 4-18-93, 10-17-94, 8-1-02,

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, (850)922-4729

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Buzz McKown, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4721

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 25, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed amendments to Rule 12A-17.005, F.A.C. (Public Use Forms), were noticed for a rule development workshop in the Florida Administrative Weekly on May 21, 2004 (Vol. 30, No. 21, pp. 2078-2079). A rule development workshop was held on June 7, 2004. No one appeared to provide comment regarding these proposed rule changes. No written comments have been received by the Department.

DEPARTMENT OF REVENUE

Miscellaneous Tax

RULE CHAPTER TITLE: Severance Taxes and Fees
 RULE CHAPTER NO.: 12B-7

RULE TITLE: Miami-Dade County Lake Belt Mitigation Fee
 RULE NO.: 12B-7.030

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12B-7.030, F.A.C. (Miami-Dade County Lake Belt Mitigation Fee), is to consolidate guidelines for penalties and interest imposed on the mitigation fee, which is administered under Chapter 212, F.S., into subsection (4) of Rule 12A-1.056, F.A.C.

SUMMARY: The proposed amendments to Rule 12B-7.030, F.A.C.: (1) provide that guidelines for penalties and interest imposed on the mitigation fee are provided in subsection (4) of

Rule 12A-1.056, F.A.C.; and (2) remove provisions from Rule 12B-7.030, F.A.C., which would be redundant of subsection (4) of Rule 12A-1.056, F.A.C., as amended.

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

LAW IMPLEMENTED: 92.525(1)(b),(2),(3),(4), 211.30, 211.31, 211.3103, 211.3106, 211.33, 212.12(2), 212.17(1)(c), 213.235(2), 213.37, 213.755(1), 373.41492 FS.

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

TIME AND DATE: 9:00 a.m., August 2, 2004

PLACE: Room 118, Carlton Building, 501 South Calhoun Street, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before Technical Assistance and Dispute Resolution is asked to advise the Department at least 48 hours before such proceeding by contacting: Larry Green, (850)922-4830. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, 1(800)955-8770 (Voice) and 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Parramore, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4709

THE FULL TEXT OF THE PROPOSED RULE IS:

12B-7.030 Miami-Dade County Lake Belt Mitigation Fee.
 (1) through (3) No change.

~~(4) When any person fails to remit the mitigation fee, or any portion thereof, on or before the day the fee is required to be paid, interest will be added to the amount of unpaid fee at the rate of interest established pursuant to Section 213.235, F.S., and Rule 12-3.0015, F.A.C. (prorated daily). Interest accrues on the amount of fee due from the date of delinquency until the date on which the tax is paid.~~

~~(4)(5) Persons who are required to make a return or to pay the mitigation fee imposed under Section 373.41492, 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 Section 212.12(2), F.S., and to the interest imposed on deficiencies~~

established under Section 213.235, F.S., and Rule 12-3.0015, F.A.C. Guidelines are provided in subsection (4) of Rule 12A-1.056, F.A.C.

Specific Authority 211.33(6), 213.06(1), 373.41492(4)(b) FS. Law Implemented 92.525(1)(b),(2),(3),(4), 211.30, 211.31, 211.3103, 211.3106, 211.33, 212.12(2), 212.17(1)(c), 213.235(2), 213.37, 213.755(1), 373.41492 FS. History—New 10-1-03, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Joe Parramore, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4709

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 25, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed amendments to Rule 12B-7.030, F.A.C. (Miami-Dade County Lake Belt Mitigation Fee), were noticed for a rule development workshop in the Florida Administrative Weekly on May 21, 2004 (Vol. 30, No. 21, p. 2079). A rule development workshop was held on June 7, 2004. No one appeared to provide comment regarding these proposed rule changes. No written comments have been received by the Department.

DEPARTMENT OF REVENUE

Miscellaneous Tax

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Tax on Gross Receipts on Dry-Cleaning	12B-11
RULE TITLE:	RULE NO.:
Returns and Filing Requirements	12B-11.006

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12B-11.006, F.A.C. (Returns and Filing Requirements), is to consolidate guidelines for penalties and interest imposed on the tax levied on the gross receipts of dry-cleaning facilities, which is administered under Chapter 212, F.S., into subsection (4) of Rule 12A-1.056, F.A.C.

SUMMARY: The proposed amendments to Rule 12B-11.006, F.A.C.: (1) provide that guidelines for penalties and interest imposed on the tax levied on the gross receipts of dry-cleaning facilities are provided in subsection (4) of Rule 12A-1.056, F.A.C.; and (2) remove provisions from Rule 12B-11.006, F.A.C., that would be redundant of subsection (4) of Rule 12A-1.056, F.A.C., as amended.

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: 212.12(2), 213.235(2), 213.755, 376.70 FS.

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

TIME AND DATE: 9:00 a.m., August 2, 2004

PLACE: Room 118, Carlton Building, 501 South Calhoun Street, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before Technical Assistance and Dispute Resolution is asked to advise the Department at least 48 hours before such proceeding by contacting: Larry Green, (850)922-4830. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, 1(800)955-8770 (Voice) and 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Gary Gray, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4729

THE FULL TEXT OF THE PROPOSED RULE IS:

12B-11.006 Returns and Filing Requirements.

(1) through (3) No change.

(4) Persons who are required to make a return or to pay tax on gross receipts on dry-cleaning imposed under Section 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 Section 212.12(2), F.S., and to the interest imposed on deficiencies established under Section 213.235, F.S., and Rule 12-3.0015, F.A.C. Guidelines are provided in subsection (4) of Rule 12A-1.056, F.A.C.

Specific Authority 212.17(6), 212.18(2), 213.06(1), 376.70(6)(b) FS. Law Implemented 212.12(2), 213.235(2), 213.755, 376.70 FS. History—New 2-19-95, Amended 6-19-96, 4-17-03,_____.

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, (850)922-4729

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Buzz McKown, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4721

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 25, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed amendments to Rule 12B-11.006, F.A.C. (Returns and Filing Requirements), were noticed for a rule development workshop in the Florida Administrative Weekly on May 21, 2004 (Vol. 30, No. 21, pp. 2079-2080). A rule development workshop was held on June 7, 2004. No one appeared to provide comment regarding these proposed rule changes. No written comments have been received by the Department.

DEPARTMENT OF REVENUE

Miscellaneous Tax

RULE CHAPTER TITLE: Tax on Perchloroethylene
 RULE TITLE: Returns and Filing Requirements
 RULE CHAPTER NO.: 12B-12
 RULE NO.: 12B-12.006

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12B-12.006, F.A.C. (Returns and Filing Requirements), is to consolidate guidelines for penalties and interest imposed on the tax levied on perchloroethylene, which is administered under Chapter 212, F.S., into subsection (4) of Rule 12A-1.056, F.A.C.

SUMMARY: The proposed amendments to Rule 12B-12.006, F.A.C.: (1) provide that guidelines for penalties and interest imposed on the tax levied on perchloroethylene are provided in subsection (4) of Rule 12A-1.056, F.A.C.; and (2) remove provisions from Rule 12B-12.006, F.A.C., that would be redundant of subsection (4) of Rule 12A-1.056, F.A.C., as amended.

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: 9:00 a.m., August 2, 2004

PLACE: Room 118, Carlton Building, 501 South Calhoun Street, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before Technical Assistance and Dispute Resolution is asked to advise the Department at least 48 hours before such proceeding by contacting: Larry Green, (850)922-4830. Persons with hearing

or speech impairments may contact the Department by using the Florida Relay Service, 1(800)955-8770 (Voice) and 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Gary Gray, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4729

THE FULL TEXT OF THE PROPOSED RULE IS:

12B-12.006 Returns and Filing Requirements.

(1) through (2) No change.

(3) Persons who are required to make a return or to pay tax on perc imposed under Section 376.75, 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 Section 212.12(2), F.S., and to the interest imposed on deficiencies established under Section 213.235, F.S., and Rule 12-3.0015, F.A.C. Guidelines are provided in subsection (4) of Rule 12A-1.056, F.A.C.

~~(3)(a) When any person fails to remit the tax, or any portion thereof, on or before the day when such tax is required to be paid, interest will be added to the amount of unpaid tax at the following rate:~~

~~1. One percent per month (prorated daily using the daily factor of .000328767) for payments due prior to January 1, 2000.~~

~~2. For payments due on or after January 1, 2000, the rate of interest established pursuant to Section 213.235, F.S., and Rule 12-3.0015, F.A.C. (prorated daily):~~

~~(b) Interest accrues on the amount due from the date of delinquency until the date on which the tax is paid.~~

~~(c) The decimal equivalent of the daily interest rate established pursuant to paragraph (a) above will be applied to any delinquent period that is less than one month.~~

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, 4-17-03,_____.

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, (850)922-4729

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Buzz McKown, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4721

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 25, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed amendments to Rule 12B-12.006, F.A.C. (Returns and Filing Requirements), were noticed for a rule development workshop in the Florida

Administrative Weekly on May 21, 2004 (Vol. 30, No. 21, p. 2080). A rule development workshop was held on June 7, 2004. No one appeared to provide comment regarding these proposed rule changes. No written comments have been received by the Department.

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Board of Trustees of the Internal Improvement Trust Fund are 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.”

STATE BOARD OF ADMINISTRATION

RULE TITLES:	RULE NOS.:
Reimbursement Contract	19-8.010
Insurer Reporting Requirements	19-8.029

PURPOSE AND EFFECT: These rules are promulgated to implement Section 215.555, Florida Statutes, regarding the Florida Hurricane Catastrophe Fund, for the 2004-2005 Contract Year.

SUMMARY: Proposed amended Rule 19-8.010, F.A.C., adopts the amended reimbursement contract for the Contract Year 2004-2005. Proposed amended Rule 19-8.029, F.A.C., adopts amendments to forms for insurer reporting to the Florida Hurricane Catastrophe Fund for the 2004-2005 Contract Year and amends incorporated forms.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The Board has prepared a statement and found the cost to be minimal.

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: 215.555(3) FS.

LAW IMPLEMENTED: 215.555(2)-(7),(10),(15) 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 RULES IS: Jack E. Nicholson, Senior FHCF Officer, State Board of Administration, P. O. Box 13300, Tallahassee, Florida 32317-3300, (850)413-1340

THE FULL TEXT OF THE PROPOSED RULES IS:

19-8.010 Reimbursement Contract.

(1) through (9) No change.

(10) The amended reimbursement contract for the 2004-2005 contract year required by Section 215.555(4), Florida Statutes, which is called Form FHCF-2004K – “Reimbursement Contract” or “Contract” between (name of

insurer) (the “Company”)/NAIC # () and The State Board of Administration of the State of Florida (“SBA”) which Administers the Florida Hurricane Catastrophe Fund (“FHCF”), is hereby adopted and incorporated by reference into this rule. This contract is effective from June 1, 2004 through May 31, 2005.

(11) No change.

Specific Authority 215.555(3) FS. Law Implemented 215.555 FS. History—New 5-31-94, Amended 8-29-95, 5-19-96, 6-19-97, 5-28-98, 5-17-99, 9-13-99, 6-19-00, 6-3-01, 6-2-02, 11-12-02, 5-13-03, 5-19-04, _____.

19-8.029 Insurer Reporting Requirements.

(1) through (4)(e) No change.

(f) For the 2004/2005 Contract Year, the reporting shall be in accordance with the following: Form FHCF-D1A, “Amended Florida Hurricane Catastrophe Fund 2004 Data Call,” rev. 5/11/04 ~~5/04~~ and UNICEDE[®] /PX Data Exchange Format, Version 4.0.0.” The two forms identified in the immediately preceding sentence are hereby adopted and incorporated by reference. A new participant shall report its actual exposure as of December 31 of the Contract Year on or before March 1 of the Contract Year, to the Administrator.

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

(c) Insurers shall report their ultimate net losses for each occurrence on or before December 31 of the Contract Year during which the covered event occurs and quarterly thereafter on the date the quarter ends on Form FHCF-L1B, “Florida Hurricane Catastrophe Fund Proof of Loss Report,” rev. 5/11/04 ~~5/04~~, which is hereby adopted and incorporated by reference. In reporting losses, deductibles or attachment points shall be applied first to the coverages provided by the FHCF. For the quarterly report due on 3/31, any insurer whose losses reach or exceed 50% of its FHCF retention shall report its losses on Form FHCF-L1B. For the quarterly report due on 6/30, any insurer whose losses reach or exceed 75% of its FHCF retention shall report its losses on Form FHCF-L1B. For the quarterly reports due on 9/30 and thereafter, any insurer which anticipates that its losses will reach 100% or more of its FHCF retention shall report its losses on Form FHCF-L1B until all its losses are paid to its policyholders and the insurer has received reimbursement from the Fund. For purposes of this rule, quarterly Loss Reports shall be those reports submitted at each quarter end date after December 31 of the Contract Year in which the covered event occurs and continuing until all claims and losses resulting from loss occurrences commencing during the Contract Year are fully discharged in accordance with the reporting requirements in this paragraph. “Fully Discharged” means the earlier of the date on which the insurer has paid its policyholders in full or the commutation clause, in Article X of the Reimbursement Contract, adopted in Rule 19-8.010, F.A.C., takes effect.

(d) As a result of reports submitted on Form FHCF-L1B, reimbursements to insurers shall be adjusted ~~in accordance with Section 215.555(4)(b)3., Florida Statutes, which prohibits~~

an insurer's recovery from all sources to exceed 100% of its losses from a covered event, and in accordance with Section 215.555(4)(d)1., Florida Statutes, which requires the Fund to pay additional amounts to insurers and insurers to return overpayments to the Fund, based on the most recent calculation of losses.

(6) No change.

Specific Authority 215.555(3) FS. Law Implemented 215.555(2),(3),(4),(5), (6),(7),(15) FS. History--New 5-17-99, Amended 6-19-00, 6-3-01, 6-2-02, 11-12-02, 5-13-03, 5-19-04, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: The Trustees of the State Board of Administration of Florida
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: The Trustees of the State Board of Administration of Florida
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 24, 2004
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 11, 2004, Vol. 30, No. 24

STATE BOARD OF ADMINISTRATION

RULE TITLES:	RULE NOS.:
Asset Transfer Procedures: Initial Transfers Occurring Bbetween 7/1/02 and 3/31/03	19-10.001
Asset Transfer Procedures: True Up Transfer for Initial Transfers Occurring between 7/1/02 and 3/31/03	19-10.002
Asset Transfer Procedures: For employees who become eligible to participate in PEORP by reason of employment in a regularly established position with a state employer commencing after April 1, 2002; or with a district school board employer commencing after July 1, 2002; or with a local employer commencing after October 1, 2002	19-10.003

PURPOSE AND EFFECT: These rules are being repealed because they relate to time periods which have passed.

SUMMARY: Proposed repealed Rule 19-10.001, F.A.C., provided procedures for the initial asset transfers at the beginning of the Public Employee Optional Retirement Program (PEORP). Proposed repealed Rule 19-10.002, F.A.C., provided procedures for calculating the true up for asset transferred during the implementation period for PEORP. Proposed repealed Rule 19-10.003, F.A.C., provided procedures for persons who became eligible for PEORP after the initial implementation period. Parts of this rule are the basis for proposed new Rule 19-11.006, F.A.C., regarding enrollment procedures for newly-hired employees.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The Board has prepared a statement and found the cost to be minimal.

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: 121.4501(3)(c)4., (8)(a) FS.

LAW IMPLEMENTED: 121.4501(2),(3),(4),(5),(6),(8),(15), 121.571(1),(2), 121.71, 121.73, 121.74, 121.78, 215.44(8)(b) 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:

TIME AND DATE: 2:00 p.m. – 4:30 p.m., Monday, August 2, 2004

PLACE: Room 116 (Hermitage Conference Room), 1801 Hermitage Blvd., Tallahassee, Florida 32308.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Cindy Gokel, Assistant General Counsel, State Board of Administration, P. O. Drawer 13300, Tallahassee, FL 32317-3300, (850)413-1199

THE FULL TEXT OF THE PROPOSED RULES IS:

19-10.001 Asset Transfer Procedures: Initial Transfers Occurring between 7/1/02 and 3/31/03.

Specific Authority 121.4501(3)(c)4.,(8)(a) FS. Law Implemented 121.4501(2),(3),(4),(5),(6),(8),(15), 121.571(1),(2), 215.44(8)(b) FS. History--New 5-9-01, Amended 8-11-02, Repealed.

19-10.002 Asset Transfer Procedures: True Up Transfer for Initial Transfers Occurring between 7/1/02 and 3/31/03.

Specific Authority 121.4501(3)(c)4.,(8)(a) FS. Law Implemented 121.4501(2),(3),(4),(5),(6),(8),(15), 121.71, 215.44(8)(b) FS. History--New 9-19-01, Amended 12-8-02, Repealed.

19-10.003 Asset Transfer Procedures: For employees who become eligible to participate in PEORP by reason of employment in a regularly established position with a state employer commencing after April 1, 2002; or with a district school board employer commencing after July 1, 2002; or with a local employer commencing after October 1, 2002.

Specific Authority 121.4501(3)(c)4.,(8)(a) FS. Law Implemented 121.4501(2),(3),(4),(5),(6),(8),(15), 121.73, 121.74, 121.78, 215.44(8)(b) FS. History--New 9-19-01, Amended 12-8-02, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kevin SigRist, Senior Investment Officer-Office of Defined Contribution Programs, State Board of Administration

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Trustees of the State Board of Administration

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 24, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 7, 2004

STATE BOARD OF ADMINISTRATION

RULE TITLES:	RULE NOS.:
Beneficiary Designation for FRS Investment Plan	19-11.002
Excessive Trading in the FRS Investment Plan	19-11.004
FRS Investment Plan Complaint Procedures	19-11.005
Enrollment Procedures for New Hires	19-11.006
Second Election Enrollment Procedures for the FRS Retirement Programs	19-11.007

PURPOSE AND EFFECT: These new rules establish procedures for the Public Employee Optional Retirement Program, also called the FRS Investment Plan.

SUMMARY: Proposed new Rule 19-11.002, F.A.C., provides procedures for making beneficiary designations for the FRS Investment Plan. Proposed new Rule 19-11.004, F.A.C., provides procedures for excessive trading in the FRS Investment Plan. Proposed new Rule 19-11.005, F.A.C., establishes procedures to address complaints in the FRS Investment Plan. Proposed new Rule 19-11.006, F.A.C., establishes procedures for enrollment for newly-hired employees. Proposed new Rule 19-11.007, F.A.C., establishes procedures to use of the second election in FRS retirement programs.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The Board has prepared a statement and found the cost to be minimal.

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: 121.4501(3)(c)4.,(8)(a) FS.

LAW IMPLEMENTED: 120.569, 120.57, 120.573, 121.051, 121.055, 121.35, 121.091(8), 121.4501(2),(3),(4),(5),(6), (8)(b)4.,(9)(f)3.,(13),(14),(15)(b), 121.571(1),(2), 121.591(3), 121.71, 121.73, 121.74, 121.78, 215.44(8)(b), 1012.875(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:

TIME AND DATE: 2:00 p.m. – 4:30 p.m., Monday, August 2, 2004

PLACE: Room 116, Hermitage Conference Room, 1801 Hermitage Blvd., Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Cindy Gokel, Assistant General Counsel, State Board of Administration, P. O. Drawer 13300, Tallahassee, FL 32317-3300, (850)413-1199

THE FULL TEXT OF THE PROPOSED RULES IS:

19-11.002 Beneficiary Designation for FRS Investment Plan.

(1) A FRS Investment Plan participant may designate a beneficiary to receive the benefits which may be payable in the event of the participant’s death. A participant may designate a beneficiary at any time, both before and after retirement.

(2) No designation of beneficiary shall be effective unless it has been filed with the FRS Investment Plan Administrator. The most recent designation of beneficiary filed with the FRS Investment Plan Administrator shall replace any previous designation whether made before or after the participant’s termination of employment or retirement. The most recent designation of beneficiary shall be determined in this order: (1) by the date the participant signed the beneficiary designation form; (2) the U.S. postmark date on the envelope if the form is mailed; (3) the login date stamped by the FRS Investment Plan Administrator.

(3) If the FRS Investment Plan participant enrolls in the FRS Investment Plan using the EZ Retirement Plan Enrollment Form for Regular, Special Risk and Special Risk Administrative Support Class Employees, Form ELE-1-EZ, rev. 02-04, the participant has chosen the beneficiary designation contained in Section 121.091(8), Florida Statutes. Note that the statutory section provides that the participant’s spouse at the time of death shall be the participant’s beneficiary unless the deceased participant had designated a different beneficiary after his or her most recent marriage. Pursuant to subsection (1), however, once the participant is enrolled in the FRS Investment Plan, the participant may change his beneficiary designation at any time.

(4) The beneficiary designation an FRS Investment Plan participant chooses if he uses the EZ Retirement Plan Enrollment Form for Regular, Special Risk and Special Risk Administrative Support Class Employees, Form ELE-1-EZ, rev. 02-04, includes the phrase “as applicable.” “As applicable” refers to that part of Section 121.091(8), Florida Statutes, which provides for “in line of duty” death payments for certain Florida Retirement System employees. These payments are not applicable to participants in the FRS Investment Plan.

(5) A participant may designate a beneficiary or beneficiaries at any time, as follows:

(a) A participant may designate a beneficiary or beneficiaries to receive the assets of the participant’s FRS Investment Plan account, either sequentially or jointly.

(b) A participant may designate as beneficiary any person, organization, trust, or his estate.

(c) Any such beneficiary designation shall be made on Form IPBEN-1, rev. 08-03, which is hereby adopted and incorporated by reference. This form is available in paper form and may be obtained by calling the toll-free MyFRS Financial Guidance Line at 1(866)446-9377, Monday through Friday, except holidays, 9:00 a.m. to 8:00 p.m. The beneficiary designation may be made online by logging onto MyFRS.com and clicking on “Resources” and then “Forms.”

(d) A participant may change his beneficiary designation at any time by filing a new beneficiary designation form. There is no separate form for changes of beneficiary designation.

(6) If a participant is married and designates a beneficiary who is not the spouse of the participant, then the participant is required to notify the spouse that he or she is not the beneficiary of the proceeds of the participant’s FRS Investment Plan account(s). The spouse must acknowledge that he or she understands that he or she is not the beneficiary of the participant’s FRS Investment Plan account(s) by signing the beneficiary designation form, Form IPBEN-1, rev. 08-03, in the appropriate place. Alternatively, the spouse may provide the FRS Investment Plan Administrator with a notarized statement reflecting the spouse’s understanding that the spouse is not the beneficiary of the participant’s FRS Investment Plan account(s). No distribution will be made of any FRS Investment Plan account(s) in the absence of a declaration by the spouse of his or her understanding that he or she is not the beneficiary of the participant’s FRS Investment Plan account(s).

Specific Authority 121.4501(8) FS. Law Implemented 121.091(8), 121.591(3) FS. History—New _____.

19-11.004 Excessive Trading in the FRS Investment Plan.

(1) Purpose.

(a) The purpose of this rule is to mitigate the negative impact on participants in the FRS Investment Plan from excessive trading and to establish limitations on such excessive trading. The Trustees of the State Board of Administration (SBA) have a fiduciary duty to make decisions about the FRS Investment Plan in the best interests of all participants and beneficiaries.

(b) Excessive trading by just a few of a fund’s investors can disrupt fund operations, increase expenses and harm fund performance for all investors. In particular, some participants have shown a high proclivity to make numerous short-term trades in foreign stock funds in an attempt to exploit funds’ pricing conventions and other technical factors. Therefore, this rule establishes limitations so that excessive trading between approved investment funds shall be prevented, without materially inhibiting all participants’ opportunities to direct contributions and account balances between investment funds with a frequency that is appropriate in light of the market volatility of the funds.

(c) The Executive Director of the SBA is directed to establish a policy on excessive trading in Section V of the Investment Policy Statement, adopted and incorporated by reference in Rule 19-9.001, Florida Administrative Code. This rule incorporates that policy.

(2) Definitions.

(a) A “participant” is a person who has an account established in the FRS Investment Plan as a result of current or previous employment with an FRS-covered employer, or being designated as an alternate payee due to a qualified domestic relations order (“QDRO”) or being a designated beneficiary when a participant is deceased.

(b) A “Roundtrip Trade” occurs when a participant conducts a series of at least two non-exempt transactions that include one or more transfers into an authorized investment fund AND one or more transfers out of the same authorized investment fund in either order (i.e. in/out or out/in), regardless of any multiple transfers from or to other different authorized investment funds during the roundtrip.

(c) An “exempt transaction” is any transaction that is initiated for purposes of: depositing employer payroll contributions; processing a distribution; processing a QDRO; or mapping funds from terminated products. Exempt transactions are not included in any calculations for the purposes of this policy.

(d) “Excessive trading” involves multiple occurrences of Market Timing Trades by a participant over time.

(e) A “Market Timing Trade” is a participant-directed series of trades with the following two characteristics:

1. One Roundtrip Trade within a 30-day period and

2. The trade amount for the one Roundtrip Trade is an aggregate amount of \$75,000 or more.

(f) “Aggregate amount of \$75,000 or more” means the total of the amounts transferred into a fund and out of a fund, constituting a Roundtrip Trade, during any rolling 30-calendar day period.

(g) “Receipt of the direction letter” as described in subparagraph (3)(b)2., below, shall mean the date on which the participant signs the return receipt; or the date noted by the U.S. Postal Service as the date on which the participant refused delivery of the letter; or the date of the last attempt to deliver the letter by the U.S. Postal Service, whichever is earlier.

(3) Limitations.

(a) Regarding authorized foreign or global stock funds: After making a non-exempt transaction by transferring any portion of their account balance into an authorized foreign or global or stock fund, participants are prohibited from completing a Roundtrip Trade in that fund for a minimum of 7 calendar days, using the convention of last-dollar-in and first-dollar-out for the roundtrip calculation.

(b) Regarding all authorized funds:

1. Participants who engage in Market Timing Trades in authorized funds will receive a warning letter sent by U.S. mail, certified/return receipt requested.

2. Participants engaging in Market Timing Trades within 30 days of the warning letter will be sent a certified/return-receipt direction letter. The direction letter shall require that the participant shall not have access to automated online or telephonic trade instructions for at least one full calendar month following the receipt of the direction letter.

3. Participants engaging in Market Timing Trades who receive more than two (2) warning letters will be sent a certified/return-receipt direction letter, as described in subparagraph 2., immediately above.

(c) If Participant A receives a direction letter as described in subparagraph (3)(b)2., above, on November 15, Participant A's access to automated online or telephonic trade instructions shall be denied until January 1. "One full calendar month," in this context, means the full calendar month following the month in which the direction letter is received. The direction letter, in this example, was received in November. The "one full calendar month" is December. Therefore, access will not be resumed until January.

(4) Examples.

(a) This subsection contains examples only. This subsection does not contain an exhaustive list of all possible transactions. Participants avoiding these examples will not necessarily avoid the impact of this rule since other transactions will meet the definitions of Market Timing Trades or Excessive Trading.

(b) If Participant A transfers \$50,000 out of Fund A and into Fund B on Monday and then transfers \$20,000 out of Fund B on Tuesday, the transaction is a Roundtrip Trade but is not a Market Timing Trade because the aggregate amount of \$75,000 specified in subparagraph (2)(e)2., above, has not been met.

(c) If Participant A transfers \$50,000 out of Fund A and into Fund B on Monday and then transfers \$55,000 out of Fund B on the following Monday, the transaction is a Roundtrip Trade and a Market Timing Trade because the aggregate amount of \$75,000 ($\$50,000 + \$55,000 = \$105,000$) has been exceeded within a 30 day period.

(d) If Participant A transfers \$5,000 out of Fund A and into Fund B on October 1 and then transfers \$5,500 out of Fund B and into Fund A on October 3, and then transfers \$40,000 out of Fund A and into Fund B on October 12 and then transfers \$25,000 out of Fund B and into Fund A on October 15, the transactions are two (2) Roundtrip Trades but are not Market Timing Trades because, although these Roundtrip Trades occurred in a time period of fewer than 30 days, the aggregate amount of each round trip trade did not exceed \$75,000.

(e) If Participant A transfers \$5,000 out of Fund A and into Fund B on November 1 and then transfers \$25,000 out of Fund A and into Fund B on November 3 and then transfers \$10,000 out of Fund A and into Fund B on November 5 and then transfers \$40,000 out of Fund B and into Fund A on November 15, the entire series of transactions constitutes a Roundtrip Trade and is a Market Timing Trade because the aggregate amount of \$75,000 has been exceeded within a 30 day period.

(f) If Participant A transfers \$5,000 out of Fund A and puts \$2,500 into Fund B and \$2,500 into Fund C on December 1 and then transfers \$25,000 out of Fund A and puts \$20,000 into Fund B and \$5,000 into Fund C on December 5, and then transfers \$10,000 out of Fund A and puts \$10,000 into Fund C on December 6 and then transfers \$23,000 out of Fund B into Fund A and \$20,000 out of Fund C into Fund A on December 16, the entire series of transactions constitutes a Roundtrip Trade and is a Market Timing Trade because the aggregate amount of \$75,000 within a 30 day period has been exceeded. It is irrelevant that money has come out of one fund and been transferred into two funds because the money has been returned to the original fund.

(g) Participant A transfers \$50,000 out of Fund A and into a foreign stock fund, which already contains \$100,000, on October 1, so that on October 1, the foreign stock fund contains \$150,000. Participant A must wait until October 8 to transfer any or all of the \$150,000 in funds out of the foreign stock fund.

(h) A Participant has \$250,000 in his FRS Investment Plan account and is the subject of a QDRO with the result that the Participant's spouse becomes entitled to half of the Participant's FRS Investment Plan account. A total of \$125,000 is transferred from the Participant's account to a newly-established account for the Participant's spouse and the funds are put into a foreign stock fund on December 1. On December 5, the Participant's spouse rolls over the entire \$125,000 into an IRA. This is neither a Roundtrip Trade nor a Market Timing Trade because the transfer is an exempt transaction, as described in paragraph (2)(c), above.

(5) For all participants, Roundtrip and Market Timing Trades are calculated using a rolling 30-calendar day time period. If a trade occurs on May 15 and the following 30-calendar day period, from May 15 through June 13, includes a sufficient number of trades to fit the definition of a Market Timing Trade, this policy shall apply.

Specific Authority 121.4501(8) FS. Law Implemented 121.4501(13),(14),(15) FS. History—New _____.

19-11.005 FRS Investment Plan Complaint Procedures.

(1) Purpose. Section 121.4501(9)(f)3., Florida Statutes, requires that the State Board of Administration "... develop procedures to receive and resolve participant complaints against a provider or approved provider personnel, and, when appropriate, refer such complaints to the appropriate agency." The following procedures outline the SBA's policy in handling

complaints filed against Investment Plan providers, including the third party administrator, education providers, and investment providers.

(2) Definitions.

(a) "Complaint" shall mean a participant's written or verbal expression of dissatisfaction with an Investment Plan provider or one of its representatives. "Complaint" shall mean a participant's written or verbal expression of dissatisfaction with an Investment Plan provider or one of its representatives.

(b) "Investment Plan" shall mean the Public Employee Optional Retirement Program as defined in Section 121.4501(2)(g), F.S.

(c) "Investment Plan providers" are:

1. Third Party Administrator, the FRS Investment Plan Administrator;

2. Companies providing Investment Plan education;

3. Investment managers providing investment services supporting mutual funds or institutional funds offered in the FRS Investment Plan;

4. Marketing companies providing marketing and educational support for their investment products or providing individual counseling; and

5. Any other company or state agency providing Investment Plan services (including the State Board of Administration of Florida).

(d) "Participant" means an employee who elects to participate in the FRS Investment Plan and enrolls in such program as provided in Section 121.4501(4), F.S.

(e) "SBA" means the State Board of Administration of Florida, the plan sponsor for the FRS Investment Plan.

(3) Procedures.

(a) First Step: Intervention by the FRS Investment Plan Administrator.

1. Any Participant with a complaint regarding an Investment Plan provider shall communicate his complaint to the Third Party Administrator [i.e., the FRS Investment Plan Administrator]. If an Investment Plan provider receives a complaint from a Participant directly, the Investment Plan provider shall notify the FRS Investment Plan Administrator within 2 business days. The FRS Investment Plan Administrator will communicate the complaint to the affected Investment Plan provider within 3 business days. The three parties will attempt to reach a satisfactory resolution of the problem within 5 business days.

2. If a Participant has a complaint solely against the FRS Investment Plan Administrator, the participant shall communicate his complaint to the FRS Investment Plan Administrator. Both parties shall attempt to reach a satisfactory resolution of the problem within 5 business days.

3. If a solution cannot be reached within 5 business days, the FRS Investment Plan Administrator will provide the Participant with a written or verbal update on the status of his complaint and the anticipated timeline for resolution.

(b) Second Step: Intervention by the SBA.

1. If an acceptable resolution is not reached in the first step, the Participant may send a written Request for Intervention to the SBA for intervention and resolution. The written Request for Intervention may be sent:

a. by regular US mail service to:

Investment Plan Complaint Resolution

Office of Defined Contribution Programs

State Board of Administration

P. O. Box 13300

Tallahassee, FL 32317-3300

b. By e-mail: DefinedContributionPrograms@fsba.state.fl.us; or

c. By fax: (850)413-1489

2. The Participant shall use Form FSBA-RFI-01-03, which is hereby adopted and incorporated by reference. The form may be obtained by using the toll free number at 1(866)446-9377 and requesting that it be mailed to the participant. By using this form, the Participant grants permission to the SBA to obtain copies of all telephone calls and other contacts the Participant has had with any of the FRS Investment Plan's service providers.

3. The Participant must provide all information. If all information is not provided, the form shall be returned to the Participant so that the missing information can be added.

4. Upon receipt of the complete Request for Intervention, an acknowledgment will be sent by regular US mail or emailed to the Participant.

5. The SBA will conduct an investigation and prepare and send to the Participant an agency action letter detailing the SBA's findings; any proposed resolution; and information on the next steps in the dispute resolution process.

(c) Third Step: Hearing Request

1. If the Participant is not satisfied with the proposed resolution as set out in the agency action letter, the Participant may file a Petition for Hearing, Form FSBA-PFH-01-03, which is hereby adopted and incorporated by reference, with the SBA. The Petition for Hearing is routinely attached to the agency action letter and may also be obtained by calling the toll free number at 1(866)446-9377 and requesting that it be sent to the Participant. The Petition for Hearing must be received within 21 days of the Participant's receipt of the agency action letter or it will be rejected as untimely and the Participant will have waived his right to a hearing.

2. The Participant shall use Form FSBA-PFH-01-03. By using this form, the Participant grants permission to the SBA to obtain copies of all telephone calls and other contacts the Participant has had with any of the FRS Investment Plan's service providers.

3. Upon receipt of the Petition for Hearing, the SBA has 15 days to respond to the petition, in accordance with Section 120.569(2)(a), Florida Statutes.

4. If the hearing request contains a disputed issue of material fact, the SBA shall, within the required 15 days, forward the hearing request to the Division of Administrative Hearings, requesting that an administrative law judge be assigned to conduct the hearing and so notify the Participant.

5. If there is no disputed issue of material fact, then the SBA shall send a Notice of Proceeding in conformance with Rule 28-106.302, F.A.C., and include a decision with regard to mediation under Section 120.573, F.A.C., and Part IV of Rule Chapter 28-106, F.A.C. The Participant has 14 days from the date of the Notice of Proceeding to submit written evidence or to ask to submit oral evidence. If the Participant asks to submit oral evidence, the SBA will schedule a hearing no sooner than 14 days from the date of the request. A Notice of Proceeding will include a reference to Rule 28-109.006, F.A.C., regarding communications media technology and the responsibility of the Participant to provide someone to swear him in if he decides to use a conference telephone.

6. The balance of the hearing process shall conform to the requirements of Chapter 120, Florida Statutes.

Specific Authority 121.4501(8)(a) FS. Law Implemented 120.569, 120.57, 120.573, 121.4501(9)(f)3 FS. History—New _____.

19-11.006 Enrollment Procedures for New Hires.

(1) Purpose. This rule adopts procedures and forms for enrollment in the Florida Retirement System Investment Plan for employees who become employed in a regularly established position with a state employer commencing after April 1, 2002; or with a district school board employer commencing after July 1, 2002; or with a local employer commencing after October 1, 2002.

(2) Definitions.

(a) "ABO," which is the acronym for the "accumulated benefit obligation," means the present value of a member's benefit in the FRS Pension Plan, which is the defined benefit program of the Florida Retirement System, to which the member would be entitled if the member retired from the FRS Pension Plan. This present value shall be calculated in accordance with the formula set out in Section 121.4501(3)(c)2., Florida Statutes.

(b) "Division" means the Division of Retirement within the Department of Management Services.

(c) "Effective date of enrollment in the FRS Investment Plan" means the employee's date of hire once the election into the FRS Investment Plan has been made.

(d) "Effective enrollment in the FRS Investment Plan" means that the employee has completed enrollment; that the TPA has entered the employee into its recordkeeping system; and that the TPA has informed the division and the employee's employer of the employee's effective date of enrollment in the FRS Investment Plan.

(e) "Employee" means an eligible employee as defined in Section 121.4501(2)(d), Florida Statutes.

(f) "Employer" means an employer as defined in Section 121.4501(2)(e), Florida Statutes. For purposes of the FRS Investment Plan, there are three general categories of employers: state agencies; school districts; and local employers.

(g) "FRS Investment Plan" means the defined contribution retirement program of the Florida Retirement System, established in Parts II and III of Chapter 121, Florida Statutes.

(h) "FRS Pension Plan" means the defined benefit retirement program of the Florida Retirement System, established in Part I of Chapter 121, Florida Statutes.

(i) "Florida Retirement System Trust Fund" or "FRSTF" shall mean the trust fund holding the assets of the FRS Pension Plan, which is the defined benefit plan of the Florida Retirement System.

(j) "Grace Period" means that procedure described in subsection (6), below, which permits, under certain circumstances, the voiding of a retirement plan election.

(k) "Participant" means an employee who elects to join the FRS Investment Plan.

(l) "Public Employee Optional Retirement Program" or "PEORP" means the defined contribution retirement program of the Florida Retirement System established by Section 121.4501, Florida Statutes, more commonly known as the FRS Investment Plan.

(m) "SBA" means the State Board of Administration of Florida.

(n) "TPA" means the third-party administrator hired by the SBA, pursuant to Section 121.4501(8)(b)1., Florida Statutes, to provide administrative services to the FRS Investment Plan.

(o) "True-up Amount" means the difference between the ABO calculated by using the participant's actual creditable service and the actual final average compensation as of the participant's effective date in the FRS Investment Plan and the ABO initially transferred.

(3) General Enrollment Procedures.

(a) All newly-hired employees are initially enrolled in the FRS Pension Plan. If a newly-hired employee chooses, within the statutory election period, to enroll in the FRS Investment Plan, the effective date of enrollment in the FRS Investment Plan is the date of hire of the employee. However, the employer contributions received by an employee prior to effective enrollment in the FRS Investment Plan will be transferred into the employee's FRS Investment Plan account at the rate the employer was required to contribute for that

employee. Only after effective enrollment in the FRS Investment Plan will the employee receive the employer contribution at the FRS Investment Plan rate appropriate to that employee's class of service, as specified in Section 121.4501(4)(a)2.b.; (b)2.b., and (c)2.b., Florida Statutes.

(b) Enrollment forms are available in the enrollment package which is sent to an employee's address of record or may be accessed online at: www.MyFRS.com; or by calling 1(866)446-9377, which is a toll-free line.

(4) Specific Enrollment Procedures.

(a) All newly-hired employees may enroll in the FRS Investment Plan no later than the last business day of the 5th month following the employee's month of hire or may elect to remain in the FRS Pension Plan. Example: If an employee is hired on January 15, he must elect the FRS Investment Plan no later than the last business day of June.

(b) All employees electing the FRS Investment Plan must complete an enrollment form appropriate to their membership class. Employees may determine their membership class by inquiry of their human resources office at their agency. The forms available are: an EZ Retirement Plan Enrollment form which is only for regular, special risk, and special risk administrative support class employees; a General Retirement Plan Enrollment form for regular, special risk, and special risk administrative support class employees; an Elected Officers' Class Retirement Plan form; a Community College Optional Retirement Program Retirement Plan Choice form; a State University System ORP-Eligible Employee Retirement Plan form; a State Senior Management Service Employees Retirement Plan form; and a Local Senior Management Service Employees Retirement Plan form.

1. All enrollment forms can be obtained at the sources listed in subparagraph (3)(b), above.

2. Only members of the regular, special risk, and special risk administrative support classes of employees may use the EZ form. If an employee chooses to use the EZ form, only limited information is required and the FRS Select Moderate Balanced Fund is the initial investment option (although that investment option may be changed by the Participant once the account is funded) and no beneficiary identifying information is required. However, beneficiary designations must be made on forms for that purpose or funds will be distributed, at the Participant's death, in accordance with Florida law and Rule 11-002, Florida Administrative Code. Beneficiary designation forms may be obtained from the same sources listed in subparagraph (3)(b), above.

(c) If one of the other forms is used, consistent with the employee's membership class, the employee shall provide the following information:

1. Employee's name and social security number;

2.a. For an employee who is not a member of any of the retirement plan options detailed in b. through f., below, a selection as to whether the employee decides to stay in the FRS

Pension Plan, or transfer his ABO, if any, to the FRS Investment Plan, or transfer to the FRS Investment Plan and leave his ABO, if any, in the FRS Pension Plan; or

b. For a state employee who is eligible for membership in the State Senior Management Service Class, a selection as to whether the employee wishes to elect:

i. The FRS Pension Plan; or

ii. The FRS Investment Plan and have future employer contributions sent to the FRS Investment Plan account; or

iii. To retain any accrued benefit in the FRS Pension Plan benefit and switch prospectively into the FRS Investment Plan, which requires that the employee must have at least 5 years of previous Pension Plan service to select this option iii; or

iv. To switch prospectively to the Senior Management Service Optional Annuity Program (SMSOAP) and retain any accrued benefit in the FRS Pension Plan, which requires that the choice form must be received no later than 4 PM Eastern Time on the 90th day from the employee's date of hire, in accordance with Section 121.055(6)(c)2., Florida Statutes;

c. For a local employee who is eligible for the Senior Management Service Class, a selection as to whether the employee wishes to elect:

i. The FRS Pension Plan; or

ii. The FRS Investment Plan and have all future employer contributions sent to the FRS Investment Plan account; or

iii. To retain any FRS Pension Plan benefit and switch prospectively into the FRS Investment Plan, which requires that the employee must have at least 5 years of previous Pension Plan service to select this option iii; or

iv. To withdraw from the Florida Retirement System, which requires contacting the employee's employer and submitting the appropriate form to that employer;

d. For an employee who is eligible for the State University System Optional Retirement Program (SUSORP), a selection as to whether the employee wishes to elect:

i. To join SUSORP and retain any accrued benefit in the FRS Pension Plan, which requires making such election no later than the 90th day after the date of hire by executing a contract with a SUSORP provider company and which also requires that faculty members employed at J. Hillis Miller Center at the University of Florida or the Medical Center at the University of South Florida shall elect this option, which requires the selection to be made no later than 4 p.m. Eastern Time on the 90th day from the employee's date of hire, in accordance with Section 121.35(3), Florida Statutes; or

ii. To join the FRS Pension Plan which must be completed no later than the last business day of the 5th month after the month of hire; or

iii. To join the FRS Investment Plan and to transfer the present value, if any, of the FRS Pension Plan benefit to the FRS Investment Plan and to have future contributions sent to the FRS Investment Plan account; or

iv. To switch prospectively to the FRS Investment Plan and retain any accrued benefit in the FRS Pension Plan, which requires that the eligible employee must have 5 years of previous Pension Plan service to select this option iv;

e. For an employee who is eligible for the Community College Optional Retirement Program, a selection as to whether the employee wishes to elect:

i. To join the FRS Pension Plan; or

ii. To join the FRS Investment Plan and to transfer any accrued benefit from the FRS Pension Plan to the FRS Investment Plan and to have future employer contributions sent to the FRS Investment Plan account; or

iii. To join the FRS Investment Plan and to retain any accrued benefit in the FRS Pension Plan which requires that the eligible employee must have 5 years of previous Pension Plan service to select this option iii; or

iv. To withdraw from the Florida Retirement System and participate in the Community College Optional Retirement Program (CCORP) which requires that the selection must be completed within 90 days of commencing CCORP qualifying employment, in accordance with Section 1012.875(3), Florida Statutes;

f. For an employee who is eligible for the Elected Officers' Class, a selection as to whether the employee wishes to elect:

i. To join the FRS Pension Plan; or

ii. To join the FRS Investment Plan and to transfer any accrued benefit from the FRS Pension Plan to the FRS Investment Plan and to have future employer contributions sent to the FRS Investment Plan account; or

iii. To join the FRS Investment Plan and to retain any accrued benefit in the FRS Pension Plan which requires that the eligible employee must have 5 years of previous Pension Plan service to select this option iii; or

iv. To join the Senior Management Service Class of the FRS Pension Plan and retain any accrued benefit in the FRS Investment Plan, which requires the eligible employee to make the choice no later than the last day of the 6th month after assuming his elected office, in accordance with Section 121.052(3)(a), Florida Statutes; or

v. To switch prospectively to the State Senior Management Service Optional Annuity Program and retain any accrued benefit in the FRS Pension Plan, which selection must be made no later than the last business day of the 6th month after assuming elected office and that the employee must be a state elected officer to select this option v; or

vi. To withdraw from the Florida Retirement System and participate in a local government Optional Annuity Program, which decision is irrevocable so long as the employee holds a position which is eligible for the Senior Management Service Class and which election must be made no later than the last

business day of the 6th month after assuming elected office and that the employee must be a local elected officer to select this option vi; or

vii. To withdraw from the Florida Retirement System altogether, which means that the employee will not participate in the Florida Retirement System or any retirement plan offered by his employer; that the effective date of the election will be the date he assumed elected office; that the employee can rejoin the Elected Officers Class upon written request; that the employee's decision must be made no later than the last business day of the 6th month after assuming elected office; and that this option vii is not available to any member who has already retired from a State of Florida administered retirement plan.

3. Understand that benefits will be distributed in accordance with Section 121.091(8), Florida Statutes, in the absence of the participant's filing a beneficiary designation form, which is available from the sources listed in paragraph (3)(b), above;

4. Select any combination of investment funds from among any of the balanced funds and other investment funds shown, provided, however, that the percentage of the employee's contributions for all of the funds selected must equal 100 percent;

5. [I understand section] sign and date a section indicating that, depending on which options were selected as described in Section 1 of the form and in subparagraph 2., above:

a. The employee understands that he can obtain a description of his rights and responsibilities under the FRS Pension Plan and the FRS Investment Plan by calling a toll-free number or accessing an internet website;

b. The employee understands the elections he has made by choosing among the various options available to him as described in Section 1 of the form and in subparagraph 2., above;

c. The employee understands that if he has elected the FRS Investment Plan, the initial ABO is an estimate which will be reconciled within 60 days and that if the employee is a member of the FRS Investment Plan Hybrid Option, he cannot make this choice unless he has at least 5 years of previous Pension Plan service and that if he is currently a member of the FRS Pension Plan, the election may constitute his second choice as provided under Section 121.4501(4)(e), Florida Statutes;

d. The employee understands that he should review the fund profiles and the Investment Fund Summary before choosing investment funds and that information will be available electronically unless the employee requests hard copies and that if the employee does not choose specific funds, his assets will be invested in the FRS Select Moderate Balanced Fund;

e. The employee understands that investment management fees may change and that funds may be added or terminated and that if funds are terminated, the employee has the choice of

moving his assets into other investment options or, if the employee does not make an affirmative decision, his assets will be moved to the FRS Select fund with the most similar risk characteristics or into a replacement fund designated by the Plan's Trustees;

f. The Florida Statutes incorporate federal law concepts of participant control so that if the employee exercises control over his assets in accordance with section 404(c) of the federal Employee Retirement Income Security Act of 1974, no program fiduciary shall be liable for any loss to his account which results from the employee's control;

g. The employee understands that he has a one time opportunity to switch plans and that to switch to the Pension Plan there will be a buy-in cost for doing so;

h. The employee understands that he can change his fund allocations at any time after the account is activated;

i. The employee understands that his account will be available by the end of the month following the date of his election;

j. The employee understands that by not selecting any investment options, he is authorizing that his assets be invested in the FRS Select Moderate Balanced Fund;

k. The employee understands that the FRS Investment Plan is not designed to facilitate short-term excessive trading; that foreign and international funds are subject to a 7-day holding period and that the excessive trading policy in Rule 19-11.004, Florida Administrative Code, applies to all participants;

l. The employee understands that he cannot file a second election using the initial enrollment form;

m. The employee understands that if he has chosen the Senior Management Service Optional Annuity Program, he must contact the plan marketing companies to receive information about investment funds; that his participation in any other state-administered retirement plan is inactivated once enrolled in SMSOAP; that he is not eligible for disability benefits; that his SMSOAP election is irrevocable so long as he is employed in a SMSOAP position; that the State of Florida does not guarantee or insure SMSOAP benefits; and that any employee contributions to SMSOAP are tax-deferred;

n. the employee understands that if he has chosen to withdraw from the Florida Retirement System, that his participation in any other state-administered retirement plan is inactivated once the withdrawal is complete; that he is not eligible for disability benefits; that his withdrawal decision is irrevocable so long as he is employed in a position eligible for participation in the Senior Management Service Class;

o. The employee understands that if he has chosen the State University System Optional Retirement Program (SUSORP), he must contact the plan marketing companies to receive information about investment funds; that his participation in any other state-administered retirement plan is inactivated once enrolled in SUSORP; that he cannot

participate in SUSORP if he is a retiree or receiving an annuity payment from the SUSORP; that he is not eligible for disability benefits; that his SUSORP election is irrevocable so long as he is employed in a SUSORP position; that the State of Florida does not guarantee or insure SUSORP benefits; and that any employee can contribute up to the statutory amount of his gross salary as an employee contribution and that these contributions to SUSORP shall be tax-deferred;

p. The employee understands that if he has chosen to withdraw from the Florida Retirement System and participate in the Community College Optional Retirement Program (CCORP), he must contract with the individual provider company(ies) for CCORP within 90 days of his employment; that failure to join CCORP will make him a compulsory member of the FRS Pension Plan; that by electing to withdraw from the Florida Retirement System, he must become a program participant in the CCORP's lifetime monthly annuity program; that his participation in any other state-administered retirement plan is inactivated once enrolled in CCORP; that he is not eligible for disability benefits; and that he has one opportunity to join either the FRS Pension Plan or the FRS Investment Plan;

q. The elected employee understands that if he has chosen to join the SMSOAP, he must be an elected officer; and that he must contact the marketing company(ies) to receive information about the plan; that his participation in any other state-administered retirement plan is inactivated; that the State of Florida does not guarantee or insure any benefits paid under the program; and that any employee contributions he makes are not tax-deferred;

r. The elected employee understands that if he has chosen to withdraw from the Florida Retirement System and participate in a local government annuity program, his effective date will be the first day of the month following the receipt of his written election to the FRS Plan Choice Administrator; and

s. The elected employee understands that if he has chosen to withdraw from the Florida Retirement System altogether, he may rejoin upon written request and that this option is not available to members who have already retired from a State of Florida administered retirement plan.

6. For employees who have chosen to participate in the Senior Management Service Optional Annuity Program, fill out a section designating marketing companies and contribution amounts for that option and check a statement that the employee has reviewed the investment fund options offered by the marketing companies and has signed the necessary contract(s) with the company(ies) for the deposit of the employees contributions as authorized in the section.

7. For employees who have chosen to participate in the State University System Optional Retirement Program, fill out a section designating marketing companies and contribution amounts for that option and check a statement that the

employee has reviewed the investment fund options offered by the marketing companies and has signed the necessary contract(s) with the company(ies) for the deposit of the employees contributions as authorized in the section.

(d)1. The enrollment form shall be complete and the election shall be final if all the required information is clearly indicated and if the enrollment form is received by the TPA by 4:00 p.m., Eastern Time. The form shall be transmitted via the U.S. mail or shall be submitted online in accordance with instructions accompanying the form.

2. The TPA shall determine that the employee's enrollment in the FRS Investment Plan is within the prescribed time period, the form in toto is complete, and the employee's election is clearly indicated. If the TPA determines that the form is incomplete, the form shall be returned to the employee and resubmitted when complete.

(e) Upon receipt of the completed enrollment form by the TPA, the TPA shall enroll the employee in the FRS Investment Plan. Upon completion of the enrollment, but no later than two working days after enrollment, the TPA shall send confirmation of the effective enrollment to the employee at the employee's home address, to the employee's employer, and to the division to inform the division that the employee is no longer in the FRS Pension Plan.

(f) Employers shall pay retirement contributions monthly for their FRS Investment Plan employees and those contributions are due to the division by the 5th working day of the month following the month for which the contributions are made. The employer shall change its employee records to reflect that the contribution rates effective on the effective date of enrollment are applicable to those of its employees who have elected to enroll in the FRS Investment Plan.

(5) Asset Transfer and True-Up Procedures for Newly-hired Employees with Previous FRS Service.

(a) For employees with previous FRS service who elect to enroll in the FRS Investment Plan with a transfer of his or her ABO, the division shall determine the amount of the employee's ABO. This amount shall be transferred to the employee's FRS Investment Plan account and shall be allocated to each investment product selected by the participant on his or her enrollment form.

(b)1. The division shall determine the employee's ABO as of the last day of the month prior to the employee's effective date of enrollment in the FRS Investment Plan.

2. Example: If the division receives the enrollment during the month of June, the effective date of enrollment for the employee in the FRS Investment Plan is July 1. The division shall determine the employee's ABO, if any, through June 30.

(c) By the 15th day of the month, the division shall notify the TPA of the ABO for each employee whose effective date of enrollment is the first day of the month and the TPA shall notify the SBA of the aggregate ABO of employees whose effective date of enrollment is the first day of the month.

(d) On the last business day of the effective month of enrollment in the FRS Investment Plan, the SBA shall transfer the aggregate ABO amount to the FRS Investment Plan custodian for distribution to the FRS Investment Plan participant accounts. Such distribution shall be directed by the TPA and shall be based on the percentage of the total investment allocated to each investment option designated by the participant on the enrollment form.

(e) The total amount initially credited to each FRS Investment Plan participant's account who chooses to move his or her ABO out of the FRS Pension Plan is an estimate of the participant's ABO as calculated by the division. Thereafter, pursuant to Section 121.4501(3)(c)3., Florida Statutes, the division shall recompute the ABO not later than 60 days after the initial transfer of funds and, if the recomputed amount differs from the transferred ABO amount by \$10 or more, the division shall cause an adjustment of the transfer of assets between FRS Investment Plan account(s) of the affected participant(s) through a true-up transfer in accordance with that statutory section.

(f) If the recomputed ABO is greater than the initial amount transferred by \$10 or more, the amount to be transferred to the participant's FRS Investment Plan account from the FRSTF will equal the excess of the recomputed ABO over the amount initially transferred plus interest. The amount transferred to each investment product shall be based on the percentage of the total investment allocated to each investment product by the participant on his or her enrollment form.

(g) If the recomputed ABO is less than the original amount transferred by \$10 or more, the TPA shall cause to be transferred from the participant's FRS Investment Plan account to the FRSTF an amount equal to the excess of the initial amount transferred over the recomputed ABO plus interest. The amount transferred from each investment product shall be based on the percentage of the total investment allocated to each investment product by the participant on his or her enrollment form.

(h) The division shall notify the SBA of the aggregate true-up amount plus interest within 45 days of the initial transfer. The division shall notify the TPA of the true-up amounts plus interest by participant account within 45 days of the initial transfer. The true-up transfer shall include the true-up amount determined by the division plus interest at the rates specified in Section 121.4501(3)(c)3., Florida Statutes, from the date of the initial transfer to the date of the true-up transfer. The transfer of the true-up amount plus interest shall occur on the 60th day following the initial transfer. In the event the 60th day following the initial transfer falls on a Saturday, Sunday, or a legal holiday, the true-up transfer shall occur on the last business day of the month preceding the Saturday, Sunday, or legal holiday.

(i) The division shall calculate the interest owed on true-up amounts. If the recomputed ABO is greater than the original amount transferred by \$10 or more, the participant will be owed a true-up amount plus interest. Interest will be calculated using the rate of 8% effective annual interest, compounded annually, and the number of days from the date of the initial transfer to the date of the true-up transfer, as specified in paragraph (h), above. If the recomputed ABO is less than the original amount transferred by \$10 or more, the participant will owe a true-up amount plus interest. Interest will be calculated on the amount owed based upon 6% effective annual interest, compounded annually, and the number of days from the date of the initial transfer to the date of the true-up transfer.

(6) Grace Period.

(a) If an employee files an election with the TPA and the employee realizes that the election was made in error, the SBA will consider, on a case-by-case basis, whether the election will be voided, subject to the following requirements:

1. Member Elects the FRS Investment Plan. The employee must notify the SBA, by a telephone call to the toll free number: 1(866)446-9377, or by e-mail, or by written correspondence directly to the SBA, to the TPA, or to the Division of Retirement, before assets are transferred from the FRS Pension Plan to the member's FRS Investment Plan account. This transfer occurs no later than the last business day of the month following the election month.

2. Member Actively Elects the FRS Pension Plan. The employee must notify the SBA no later than the last business day of the month following the election month.

(b) If the request to void the election is made timely and the SBA agrees the election will be voided, the member will be required to sign a release and return it to the SBA prior to the election's being officially voided. The member will acknowledge that failure to make a new election within one calendar month will result in the original election's being reinstated, and that once the revised election is made it cannot be changed (unless the member uses his second election, if available).

(c) Upon receipt of the release, the Division of Retirement and the TPA will be directed to do the following:

1. The Division of Retirement will revise its database to reflect the member's plan change and extend the member's election period by one calendar month.

2. The TPA will contact the member via telephone or email and tell him or her that the election has been voided.

3. The member will make a new election via telephone, or using the website at MyFRS.com or using a form prior to the newly-established deadline.

(d) Nothing contained in this subsection will interfere with a member's right to file a complaint, as permitted by Section 121.4501(9)(f)3., Florida Statutes.

(7) Costs associated with the liquidation or transfer of assets from the FRSTF to the FRS Investment Plan will be deducted from the FRSTF. The FRSTF will not be responsible for any transaction costs associated with the purchase of FRS Investment Plan assets. Those costs will be deducted from FRS Investment Plan accounts or otherwise charged to FRS Investment Plan participants.

(8) The amount transferred to each investment product shall be based on the percentage of the total investment allocated to each fund by the participant on his or her enrollment form as described in paragraph (3)(b), above. However, pursuant to Section 121.4501(4)(d), Florida Statutes, amounts not specified will be invested in the default option designated in the Investment Policy Statement, as approved by the Trustees and adopted and incorporated by reference in Rule 19-9.001, Florida Administrative Code.

(9) In order to effectively and efficiently administer the investment programs of the SBA and in accordance with Section 215.44(8)(b), Florida Statutes, the records and other information relating to investments made by the SBA will be confidential and exempt from Chapter 119, Florida Statutes, until 30 days after completion of each investment transaction.

Specific Authority 121.4501(3)(c)4.,(8)(a) FS. Law Implemented 121.051, 121.055, 121.35, 121.4501(2),(3),(4),(5),(6),(8),(15), 121.73, 121.74, 121.78, 215.44(8)(b), 1012.875(3) FS. History--New _____.

19-11.007 Second Election Enrollment Procedures for the FRS Retirement Programs.

(1) Purpose. The purpose of this rule is to establish procedures for making the second election permitted by Section 121.4501(4)(e), Florida Statutes. This rule includes procedures for participants who initially chose the FRS Investment Plan or the FRS Investment Plan Hybrid Option to use their 2nd election to transfer to the FRS Pension Plan; for participants who chose or defaulted into the FRS Pension Plan to use their 2nd election to transfer to the FRS Investment Plan; and for participants who chose or defaulted into the FRS Pension Plan to use their 2nd election to transfer to the FRS Investment Plan Hybrid Option.

(2) Definitions.

(a) "FRS Investment Plan" means the optional defined contribution retirement plan within the Florida Retirement System, established in Parts II and III of Chapter 121, Florida Statutes, in which a participant chooses to transfer his accrued service benefit in the FRS Pension Plan, if any, to the FRS Investment Plan and further chooses that all future employer contributions be deposited in his FRS Investment Plan account.

(b) "FRS Investment Plan Hybrid Option" means the optional defined contribution retirement plan within the Florida Retirement System, established in Parts II and III of Chapter 121, Florida Statutes, in which a participant chooses to retain his accrued service benefit in the FRS Pension Plan, in

accordance with Section 121.4501(3)(c)1., Florida Statutes, and further chooses that all future employer contributions be deposited in his FRS Investment Plan account.

(c) "FRS Pension Plan" means the defined benefit retirement plan within the Florida Retirement System, established in Part I of Chapter 121, Florida Statutes.

(d) "I," "you," or "your:" these references are to the participant in the context of relevant parts of the two enrollment forms described in this rule.

(3) General Procedures.

(a) All participants who wish to change their FRS retirement plan using their second election must use a 2nd election enrollment form. There are two types of forms. The "2nd Election Retirement Plan Enrollment Form" requires the participant to choose the investment options he wishes to use if he is choosing to move to either the FRS Investment Plan or the FRS Investment Plan Hybrid Option. Alternatively, by using the "2nd Election EZ Retirement Plan Enrollment Form," the participant authorizes that his investment fund option is the FRS Select Moderate Balanced Fund for his initial selection.

(b) Both forms are available by calling the toll-free number for the MyFRS Financial Guidance Line: 1(866)446-9377, or for the hearing-impaired: 1(888)429-2160; or by using the MyFRS.com website and clicking on Resources and then on Forms.

(c) The form must be mailed to the FRS Plan Choice Administrator, CitiStreet, FRS Investment Plan Administrator, P. O. Box 56290, Jacksonville, Florida 32241-6290.

(d) The form must be on the premises of the FRS Plan Choice Administrator before 4:00 p.m. Eastern time on the last day of the month in which the participant wishes to make the change from one retirement plan to the other. The participant must work at least one day in the month that the election becomes effective for the transfer to be effective. If the last day of the month is a Saturday, Sunday, or legal holiday, the deadline is the last business day of the month.

1. Example: if a participant submits the 2nd Election Retirement Plan Enrollment Form in the month of November, the effective date of the plan change will be December 1 and the participant must work at least one day in the month of December for the plan change to be effective.

2. Example: if a participant wishes to have the 2nd Election effective in the month of December, the participant must have the 2nd Election form on the premises of the FRS Plan Choice Administrator before 4:00 p.m. Eastern Time on November 30.

3. Example: the last day of February, 2004, was Sunday, February 29. Therefore, the last business day was the preceding Friday, February 27. For a 2nd Election to have been effective as of March 1, 2004, the form must have been received by the FRS Plan Choice Administrator before 4:00 p.m. Eastern Time on Friday, February 27.

(4) Specific Procedures for the "2nd Election Retirement Plan Enrollment Form."

(a) All participants are required to fill out Section 1 of the form by providing the participant's name and Social Security number and checking only one of three boxes, indicating which choice the participant is making. These boxes contain the following information:

1. Change from the FRS Investment Plan or FRS Investment Plan Hybrid Option to the FRS Pension Plan (Please complete Section 4, as described in paragraph (d) below.) I understand I am using my existing FRS Investment Plan account balance to "buy" into the FRS Pension Plan. I understand that if my account balance is not sufficient to cover the cost of the "buy in", I must pay the balance due from my personal funds before being allowed into the FRS Pension Plan. I understand that I may move my FRS Investment Plan account balance into more conservative, less risky investment options within the FRS Investment Plan in order to potentially reduce the volatility of my account balance prior to liquidation and movement to the FRS Pension Plan.

2. Change from the FRS Pension Plan to the FRS Investment Plan. (Please complete Sections 3 and 4, as described in paragraphs (c) and (d), below.) I understand I am transferring the present value, if any, of my FRS Pension Plan benefit to the FRS Investment Plan. I understand that I will have future employer contributions deposited in my Investment Plan account.

3. Change from the FRS Pension Plan to the FRS Investment Plan Hybrid Option. (Please complete Sections 3 and 4, as described in paragraphs (c) and (d) below) I am retaining any accrued benefit in the FRS Pension Plan with future employer contributions deposited in my FRS Investment Plan account. I understand that I must have 5 years of Pension Plan service to select this option.

(b) The second section on the form discusses the beneficiary designation. The designation cannot be made on the enrollment form. This section contains the following information:

1. A beneficiary designation can be completed after you qualify for a retirement benefit (i.e., become "vested"). If you do not designate a beneficiary after you are vested, your benefit will be distributed in accordance with Section 121.091(8), Florida Statutes, as applicable.

2. You may designate a beneficiary by completing a Beneficiary Designation Form (BEN-001 Pension Plan or IPBEN-I Investment Plan). Both forms are available online at MyFRS.com or by calling the MyFRS Financial Guidance Line.

(c)1. The third section on the form discusses and describes the FRS Investment Plan Fund Selections. A participant who has checked the first box in the first section of the form, indicating a change to the FRS Pension Plan, must not complete this section. Participants who have checked either the

second or the third boxes in the first section of the form must complete this section by choosing their investment fund options.

2. The investment fund selection must be indicated by:

a. Writing the percentage you wish to allocate to each investment option. Use whole percentages only.

b. Choosing your investment funds from the balanced funds, the other investment funds OR from a combination of the two.

c. Ensuring that the total of all your selections equals 100%.

(d) The fourth section on the form is an authorization section which will ensure that all participants understand the information described. All participants must read the information in the fourth section before signing the form. The information which follows is applicable as indicated depending on the choice the participant has made.

1. For all participants: I understand that I can find a description of my rights and responsibilities under the FRS Pension Plan and the FRS Investment Plan in the respective Summary Plan Descriptions, Florida Statutes, and Administrative Rules available through the MyFRS Financial Guidance Line at 1(866)44-MyFRS (1(866)446-9377; or TTY: 1(888)429-2160) or at MyFRS.com.

2. For participants choosing to transfer to the FRS Pension Plan:

a. I understand that I have elected to change retirement plans to the FRS Pension Plan.

b. I understand that this election will constitute my one-time second election as provided under the FRS and that I must remain in this retirement plan until my retirement.

c. I understand that there may be a cost to change to the FRS Pension Plan, which I can get by calling the MyFRS Financial Guidance Line and connecting to the Division of Retirement, and that such cost may require that I pay some amount greater than my current FRS Investment Plan account balance.

d. I understand that I have the ability to move my FRS Investment Plan account balance into conservative investment options within the FRS Investment Plan in order to potentially reduce the volatility of my account balance prior to liquidation and movement to the FRS Pension Plan.

e. I understand that my one-time second election is irrevocable.

3. For participants choosing to transfer to the FRS Investment Plan:

a. I understand that I have elected to change retirement plans to the FRS Investment Plan, and that any accrued value I may have in the FRS Pension Plan will be transferred to the FRS Investment Plan.

b. I understand that this election will constitute my one-time second election as provided under the FRS and that I must remain in this retirement plan until my retirement.

c. I understand the initial transfer amount is an estimate and that within 60 days of that transfer, there will be a reconciliation pursuant to Florida law, which will use my actual FRS membership record. The amount could be more or less than the estimate I received.

d. I understand that I can get the amount of my accrued value by calling the MyFRS Financial Guidance Line and connecting to the Division of Retirement.

e. I understand that if I am currently a member of the FRS Investment Plan Hybrid Option, I cannot make this election.

f. I understand my one-time second election is irrevocable and I understand that I must remain in this plan until my retirement.

4. For participants choosing to transfer to the FRS Investment Plan Hybrid Option:

I understand that I have elected to change retirement plans to the FRS Investment Plan and that my FRS Pension Plan benefit already accrued will remain with the FRS Pension Plan and that a FRS Investment Plan account will be established to receive all future employer contributions.

5. For participants choosing to transfer either to the FRS Investment Plan or to the FRS Investment Plan Hybrid Option:

a. I understand that I should review the Fund Profiles and the Investment Fund Summary at MyFRS.com before making any changes to my investment fund selections. I understand that information on investment funds will be provided in electronic format, unless I request hard copies. I understand that I can change my fund allocations at any time after my account is activated by accessing MyFRS.com or by calling the toll-free MyFRS Financial Guidance Line. I understand that my account will be available by the end of the month following the effective date of this election. If I do not choose specific investment funds, I am authorizing that my assets be invested in the FRS Select Moderate Balanced Fund. I understand that the FRS Investment Plan is not designed to facilitate short-term excessive fund trading. Foreign and global investment funds are subject to a minimum holding period of 7-calendar days following any non-exempt transfers into such funds and I may be subject to trading controls on other funds in the event that I trade excessively or an equity wash is in effect for a stable value fund.

b. I understand that investment management fees will be deducted from my FRS Investment Plan account. I also understand that these fees may change in the future and that funds may be added or terminated. I understand that if any of the funds I select in the FRS Investment Plan are terminated in the future, I will be able to move my assets into other investment funds prior to termination. Otherwise, my assets in the terminated fund(s) will be automatically moved into a replacement fund designated at that time.

c. I understand that Sections 121.4501(8)(b)4, and 121.4501(15)(b) of Florida Statutes, incorporate the federal law concept of participant control, established by regulations of the U.S. Department of Labor under section 404(c) of the Employee Retirement Income Security Act of 1974. If I exercise control over the assets in my FRS Investment Plan account, pursuant to section 404(c) regulations and all applicable laws governing the operation of the FRS Investment Plan, no program fiduciary shall be liable for any loss to my account which results from my exercise of control.

(e) The form must be signed and dated by the participant and must include a daytime telephone number. Inclusion of an e-mail address or the name of the participant's employing agency is optional on the participant's part.

(f) The form must be mailed to the address set out in paragraph (2)(c), above.

(g) The participant must put his Social Security number at the bottom of each page of the form so that if the pages become separated, they can be properly reassembled.

(h) For participants transferring to the FRS Pension Plan, the election may require a personal payment if the participant's account balance was less than the calculated amount required to buy back into the FRS Pension Plan. Such payment, if necessary, must be received by the date determined by the Division of Retirement. If the required amount is not received by the Division of Retirement by the date due, the election will be voided. The participant will receive notification and proper instructions from the Division of Retirement detailing where and in what form to send any personal payments.

(i) A confirmation statement will be mailed to the participant's address of record once the completed form is received and processed.

(j) The participant should carefully review the form and be sure that it is signed and dated. The participant should keep a copy for his records.

(k) If the participant submits a form that is incomplete, it will not be processed. The incomplete form will be returned to the participant to add any missing information.

(5) Specific Procedures for the "2nd Election EZ Retirement Plan Enrollment Form."

(a) Form ELE-2, "2nd Election EZ Retirement Plan Enrollment Form," v. 03-04, is hereby adopted and incorporated by reference.

(b) All participants choosing to use this form are required to fill out Section 1 of the form by providing the participant's name and Social Security number and checking only one of three boxes, indicating which choice the participant is making.

(c) The form must be signed and dated by the participant and must include a daytime telephone number. Inclusion of an e-mail address or the name of the participant's employing agency is optional on the participant's part.

(d) The form must be mailed to the address set out in paragraph (3)(c), above.

(e) The participant must put his Social Security number at the bottom of each page of the form so that if the pages become separated, they can be properly reassembled.

(f) For participants transferring to the FRS Pension Plan, the election may require a personal payment if the participant's account balance was less than the calculated amount required to buy back into the FRS Pension Plan. Such payment, if necessary, must be received by the date determined by the Division of Retirement. If the required amount is not received by the Division of Retirement by the date due, the election will be voided. The participant will receive notification and proper instructions from the Division of Retirement detailing where and in what form to send any personal payments.

(g) A confirmation statement will be mailed to the participant's address of record once the completed form is received and processed.

(h) The participant should carefully review the form and be sure that it is signed and dated. The participant should keep a copy for his records.

(i) If the participant submits a form that is incomplete, it will not be processed. The incomplete form will be returned to the participant to add any missing information.

(6) Grace Period.

(a) If a member files an election with the TPA and the employee realizes that the election was made in error, the SBA will consider, on a case-by-case basis, whether the election will be voided, subject to the following requirements:

1. Member Elects the FRS Investment Plan. The SBA must be notified, by a telephone call to the toll free number: 1(866)446-9377, or by e-mail, or by written correspondence directly to the SBA, to the TPA, or to the Division of Retirement, before assets are transferred from the FRS Pension Plan to the member's FRS Investment Plan account. This transfer occurs no later than the last business day of the month following the election month.

2. Member Elects the FRS Pension Plan. The SBA must be notified no later than the last business day of the month following the election month.

(b) If the request to void the election is made timely and the SBA agrees the election will be voided, the Division of Retirement and the TPA will be directed to do the following:

1. The Division of Retirement will revise its database to reflect the member's plan change and extend the member's election period by one calendar month.

2. The TPA will contact the member via telephone or email and tell him or her that the election has been voided.

3. The member will make a new election via telephone, or using the website at MyFRS.com or using a form prior to the newly-established deadline.

(c) Nothing contained in this subsection will interfere with a member's right to file a complaint, as permitted by Section 121.4501(9)(f)3., Florida Statutes.

Specific Authority 121.4501(8)(a) FS. Law Implemented 121.4501(3),(4),(8)(b)4., (15)(b) FS. History–New _____

NAME OF PERSON ORIGINATING PROPOSED RULE: Kevin SigRist, Senior Investment Officer, Office of Defined Contribution Programs, State Board of Administration

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Trustees of the State Board of Administration

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 24, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 7, 2004

STATE BOARD OF ADMINISTRATION

RULE TITLE: Acceptance of Rollovers RULE NO.: 19-12.007

PURPOSE AND EFFECT: This proposed amended rule adopt a rollover form for the FRS Investment Plan.

SUMMARY: Proposed amended Rule 19-12.007, F.A.C., adopts a form for the acceptance of rollovers in compliance with the Economic Growth and Tax Relief Reconciliation Act of 2001 which permitted rollovers if state legislation were enacted. The Florida Legislature enacted such legislation in CS/HB 807 during the 2002 session.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The Board has prepared a statement and estimated the cost to be minimal.

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 121.4501(5)(c) FS.

LAW IMPLEMENTED 121.4501(5)(c) 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:

TIME AND DATE: 2:00 p.m. – 4:30 p.m., Monday, August 2, 2004

PLACE: Room 116 (Hermitage Conference Room), 1801 Hermitage Blvd., Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Cindy Gokel, Assistant General Counsel, State Board of Administration, P. O. Drawer 13300, Tallahassee, FL 32317-3300, (850)413-1199

THE FULL TEXT OF THE PROPOSED RULE IS:

19-12.007 Acceptance of Rollovers.

(1) Notwithstanding the definitions of section 19-12.001, for purposes of this section the following words and terms have the following meanings: “Rollover” means either a direct rollover or a contribution of an eligible rollover distribution to the Plan for the benefit of the distributee that satisfies the time

period requirement and other requirements of Code s. 402(c). A “direct rollover” means an eligible rollover distribution that is made directly to the Plan by an eligible retirement plan for the benefit of the distributee. An “eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee in an eligible retirement plan. Except for that portion of a distribution not includible in gross income which is transferred directly to the Plan in accordance with Code s. 402(c)(2), an eligible rollover distribution does not include any of the distributions described in the second sentence of the definition of “eligible rollover distribution” in Rule 19-12.001, F.A.C. An “eligible retirement plan” means any of the types of plans included in the definition of “eligible retirement plan” in Rule 19-12.001, F.A.C., that makes the distributee’s eligible rollover distribution.

(2) It is intended that the Plan accept rollovers in accordance with the requirements of this section. Except as otherwise provided below, before accepting a rollover to the Plan the administrator evaluating the rollover shall first obtain sufficient evidence to support a reasonable conclusion that the rollover is valid under the Code and shall determine that such rollover meets the requirements of this section.

(3) The Plan administrator shall accept that portion of a distribution in a direct trustee-to-trustee transfer which has been identified by the eligible retirement plan making the distribution as not includible in gross income if such portion is otherwise eligible for rollover. Such amount shall be accounted for separately, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(4) Payment to the Plan must be in cash in the form of a check. In a direct rollover the check should be made payable to the “FRS Investment Plan SBA as trustee of the Public Employee Optional Retirement Program Trust Fund FBO (the participant’s name).”

(5) Instructions regarding check delivery and other information relating to the processing of rollovers may be obtained by calling the program’s employee phone line which is a toll free line: 1(866)446-9377 or accessing the website at www.MyFRS.com. Participants shall use Form IPRO-1, rev. 12-03, “Employee Rollover Deposit Form,” which is hereby adopted and incorporated by reference, to effect rollovers described in this rule.

~~(6)(5)~~ Rollovers to the Plan shall be accounted for separately.

Specific Authority 121.4501(5)(c) FS. Law Implemented 121.4501(5)(c) FS. History–New 12-8-02, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kevin SigRist, Senior Investment Officer-Office of Defined Contribution Programs, State Board of Administration

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Trustees of the State Board of Administration

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 24, 2004
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 7, 2004

STATE BOARD OF ADMINISTRATION

RULE TITLES:	RULE NOS.:
Role and Responsibilities of the State Board of Administration of Florida	19-13.001
Role and Responsibilities of the Division of Retirement within the Department of Management Services	19-13.002
Role and Responsibilities of State, School District, and Local Employers Participating in the Florida Retirement System	19-13.003
Role and Responsibilities of Third Party Contractors	19-13.004

PURPOSE AND EFFECT: These new rules state the role and responsibilities of entities involved in the FRS Investment Plan.

SUMMARY: Proposed new Rule 19-13.001, F.A.C., states the role and responsibilities for the State Board of Administration. Proposed new Rule 19-13.002, F.A.C., states the role and responsibilities of the Division of Retirement. Proposed new Rule 19-13.003, F.A.C., states the role and responsibilities of government employers. Proposed new Rule 19-13.004, F.A.C., states the role and responsibilities of third party contractors.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The Board has prepared a statement and found the cost to be minimal.

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: 121.4501(3)(c)4.,(8)(a) FS.

LAW IMPLEMENTED: 121.091(5), 121.4501(1),(4), (8)(b),(e),(9)(a),(10)(h),(14),(15),(19), 121.71, 121.72, 121.73, 121.74, 121.76, 121.77, 121.78 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:

TIME AND DATE: 2:00 p.m. – 4:30 p.m., Monday, August 2, 2004

PLACE: Room 116, Hermitage Conference Room, 1801 Hermitage Blvd., Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Cindy Gokel, Assistant General Counsel, State Board of Administration, P. O. Drawer 13300, Tallahassee, FL 32317-3300, (850)413-1199

THE FULL TEXT OF THE PROPOSED RULES IS:

19-13.001 Role and Responsibilities of the State Board of Administration of Florida.

(1) The State Board of Administration of Florida (“SBA”) is responsible for establishing, implementing, and administering the optional defined contribution program, called the “Public Employee Optional Retirement Program” (“PEORP”), in accordance with Section 121.4501(1), Florida Statutes. The SBA is the Plan Sponsor and the plan documents consist of the Florida Statutes and rules adopted thereunder. The Summary Plan Document (SPD) is a summary of the plan documents for the convenience of participants. The SPD can be changed by the SBA at any time without prior notice to Florida Retirement System (FRS) members. The SBA’s primary responsibilities are set out in subsections (2) through (13), below. Each of these major responsibilities involves additional decisions which then in turn need to be implemented. Those decisions, to the extent they are not solely on a case-by-case basis, are adopted by rule. With regard to all of the responsibilities set out below, the SBA is responsible for ensuring that all of those individual responsibilities are carried out.

(2) The SBA has hired general and specialized consultants to assist in the implementation and on-going operation of the PEORP. Their roles and responsibilities are found in Rule 19-13.004, F.A.C.

(3) The SBA has hired a third party administrator, educational service providers, investment option providers, and has entered into a contract with the Division of Retirement within the Department of Management Services to provide certain administrative services. Their roles and responsibilities are found, respectively, in Rules 19-13.004 and 19-13.002, F.A.C.

(4) The SBA is responsible for adhering to and enforcing the fiduciary standards and responsibilities required by certain sections of the Employee Retirement Income Security Act of 1974, which are incorporated in Florida law in Section 121.4501(15), Florida Statutes.

(5) The SBA is responsible for coordinating with the Division of Retirement within the Department of Management Services (Division) in providing the education component described in Section 121.4501(10)(c) and (d), Florida Statutes, and a communication component to provide information to employers as described in Section 121.4501(10)(f), Florida Statutes, and has a contractual relationship with the Division regarding certain administrative activities.

(6) The SBA is responsible for providing information to PEORP participants on a quarterly basis, pursuant to Section 121.4501(11), Florida Statutes.

(7) The SBA is responsible for obtaining and maintaining the tax qualified status of the PEORP and for compliance with the federal Internal Revenue Code.

(8)(a) The SBA is responsible for directing and monitoring the activities of all private contractors as those contractors function in the on-going operation of the PEORP. These contractors include the third party administrator, the education service providers, and the investment product providers.

(b) The SBA is also responsible for directing and monitoring the activities of the Division of Retirement within the Department of Management Services with which the SBA has an interagency agreement for provision of services. Note that the Division is both a contractor with the SBA to provide some administrative services and coordinates with the SBA with regard to educational services.

(9) The SBA is responsible for the transition of assets from the defined benefit program to the defined contribution program upon the election of a member to transfer and is responsible for making such adjustments to plan accounts and participant accounts as are necessary to process election reversals and prior period corrections to contributions and accompanying payroll data.

(10) The SBA is responsible for developing an investment policy statement for the program.

(11) The SBA is responsible for choosing, monitoring, and terminating investment options in PEORP. The SBA is responsible for mapping account balances of participants in the event of investment option termination. The SBA is responsible for distributing all data regarding these investment options for presentation to participants. The SBA is responsible for rebalancing and reconstituting multiple manager investment options and also the three balanced options provided in the investment policy statement utilizing information from a registered investment advisor and fiduciary to the Florida Retirement System.

(12) The SBA is responsible for implementing the confidentiality provisions in Section 121.4501(19), Florida Statutes.

(13) The SBA is responsible for developing all contracts used in the PEORP.

(14) The SBA is responsible for all rulemaking for the PEORP.

Specific Authority 121.4501(8)(a) FS. Law Implemented 121.4501(1),(4),(8)(b),(c),(9),(10),(14),(15),(19) FS. History—New _____.

19-13.002 Role and Responsibilities of the Division of Retirement within the Department of Management Services.

(1) The Division of Retirement (Division) within the Department of Management Services has entered into a contract with the State Board of Administration of Florida (SBA) to provide certain administrative services, in accordance with Section 121.4501(8)(b)1., Florida Statutes.

(2) The administrative services referenced in subsection (1), above, are to:

(a) Determine membership eligibility and employer participation eligibility;

(b) Collect and process employer payroll contributions and payroll-related data;

(c) Forward employer payroll contributions and payroll-related data to the third party administrator, including termination and leave of absence indicators, if available;

(d) Calculate participants' defined benefit plan benefit, calculate the accumulated benefit obligation and calculate any buy-back amount for those participants who elected the PEORP but subsequently wish to return to the defined benefit plan;

(e) Maintain and provide access to the Florida Retirement System database;

(f) Provide telephone support regarding employee or employer questions on the defined benefit plan and contribution processing, but transfer general retirement plan choice, enrollment and financial planning telephone calls to other education and administration third party contractors;

(g) Administer the disability benefits for the Florida Retirement System;

(h) Administer the health insurance subsidy;

(i) Determine employee vesting requirements in the Florida Retirement System, as required by law;

(j) Administer qualified domestic relations orders for the Florida Retirement System; and

(j) Administer forfeiture of benefits procedures, in accordance with Section 121.091(5), Florida Statutes.

Specific Authority 121.4501(8)(a) FS. Law Implemented 121.091(5), 121.4501(8),(10) FS. History—New _____.

19-13.003 Role and Responsibilities of State, School District, and Local Employers Participating in the Florida Retirement System.

(1) Employer contributions.

(a) All state, school district, and local employers who participate in the Florida Retirement System (FRS) (employers) are responsible for making the employer contributions required by Parts II and III of Chapter 121, Florida Statutes. These include the contributions for the benefit of participants in the Public Employee Optional Retirement Program (PEORP), in accordance with Section 121.4501(5) and with Part III of Chapter 121, Florida Statutes, and also include the contributions for administrative and educational expenses, disability benefits, the health insurance subsidy, and social security.

(b) When an employer requests an adjustment to retirement contributions or accompanying payroll data for prior periods, the following applies:

1. If an employer's adjustment negatively affects a PEORP participant's account balance in either the contributions or the accumulated benefit obligation transferred from the FRS defined benefit plan, and the PEORP participant's account

balance is less than the monetary impact of the adjustment, then the employer will be granted an adjustment not to exceed the PEORP participant's account balance; or

2. If an employer's adjustment is with respect to a former PEORP participant (i.e. who has terminated FRS-covered employment and has taken a full distribution of his or her account balance), the State Board of Administration (SBA) will communicate to the former participant the obligation of the former participant to repay the amount of the adjustment to the employer.

3. However, neither the SBA, nor the PEORP Trust Fund, nor the Florida Retirement System Trust Fund shall incur any loss or gain as a result of an employer's negative adjustments for a PEORP participant or a former participant.

(2) Education.

(a) In the natural course of administering their personnel functions, all FRS employers shall at least annually communicate to all employees that the FRS is composed of two retirement plans; that employees have options as to which FRS plan to enter; that employees have multi-media educational resources from the FRS to inform their FRS plan choice; and that employees have statutory deadlines by which enrollments must be made. Employers shall use educational materials supplied by the SBA and the Division to communicate such information, but not to the exclusion of educational material they may independently develop. Employers are solely responsible for the accuracy and completeness of any educational material they develop.

(b) Employers may request all printed material and videos from the SBA and from the Division or from their agents.

(3) Employers are not agents of the SBA or the FRS.

Specific Authority 121.4501(8)(a) FS. Law Implemented 121.4501(5),(10)(h), 121.71, 121.72, 121.73, 121.74, 121.76, 121.77, 121.78 FS. History—New

19-13.004 Role and Responsibilities of Third Party Contractors.

(1) The Third Party Administrator (TPA) provides administrative services in the operation of the Public Employee Optional Retirement Program (PEORP) and enrollment processing for the Florida Retirement System (FRS). Other administrative services are provided by the Division of Retirement within the Department of Management Services (Division). Those services are described in Rule 19-13.002, Florida Administrative Code.

(2) The TPA's primary responsibilities are to:

(a) Maintain the PEORP database;

(b) Process new employee enrollments into the FRS defined benefit plan and PEORP and to process existing employee enrollments, via the exercise of the employees' one-time Second Election, pursuant to Section 121.4501(4)(e), Florida Statutes, into either FRS plan;

(c) Transmit election information to the Division and to the State Board of Administration of Florida (SBA);

(d) Maintain a database of PEORP beneficiary designations;

(e) Transfer PEORP employer contributions to the investment product providers, after contributions have been consolidated by the Division;

(f) Transmit aggregate accumulated benefit obligation data segregated by investment product provider to the SBA;

(g) Maintain PEORP member account data and such data as is sufficient to process Second Elections by existing employees;

(h) Implement account transfers at the request of participants;

(i) Implement withdrawals from account by phone, over the SBA's website, or by mail;

(j) Implement distribution of PEORP benefits to retirees or survivors or designated companies;

(k) Provide quarterly statements to participants;

(l) Distribute written material;

(m) Provide phone response service on a toll-free line to assist participants and employers to accomplish any required responsibility; and

(n) Provide recordkeeping for all PEORP data within its responsibilities, including monitoring of monetary limits imposed by the federal Internal Revenue Code.

(3) Educational services are provided by multiple providers hired by the SBA, in accordance with Section 121.4501(8)(b)3., Florida Statutes. Subsections (8) and (10) of Section 121.4501, Florida Statutes, require educational services to be provided to all members of the FRS, both during the initial election period for choosing either the defined benefit plan or the defined contribution plan and to support Second Elections. Educational services are also to be provided regarding retirement planning, including offering financial planning guidance on matters such as investment diversification, investment risks, investment costs, and asset allocation. Therefore, the educational service organizations were hired to provide a variety of services.

(4) One or more educational services providers furnish internet financial information, and guidance. More specifically, companies create technical education content and provide the following services on the internet:

(a) A defined benefit/defined contribution benefits projections calculator;

(b) A variety of other analytical financial and retirement planning tools;

(c) Investment guidance, which includes communicating general investment and financial information and risk and return modeling of investment options and optimized combinations or asset allocations, within a single participant-directed tax-exempt retirement account, under the following requirements:

1. Online modeling services will be based on generally-accepted investment theories that take into account historic returns of different generic asset classes over defined periods of time;

2. All material facts and assumptions that may affect a member's assessment of the different asset allocations shall either be specified in the online modeling service or entered into the online modeling services by the member;

3. To the extent that an asset allocation generated by the online modeling service identifies any specific investment option available under a participant-directed and tax-exempt retirement account, the online service will have fully incorporated and considered all investment options available within that retirement plan, as well as all household assets, except that the member must enter into the online modeling service non-FRS retirement account investment universes and household assets;

4. Any asset allocation, or specific combinations of investment options, communicated to members will be accompanied by a disclaimer that it is based on the information provided and is not individualized to reflect all of the particular needs of the member that may be relevant to his or her investment decisions, and that in applying the asset allocation to his or her individual situation, the member should consider his or her other assets, income and investments (including, for example, equity in a home, IRA investments, savings accounts and interest in other retirement plans) as well as his or her investments within the account for which the guidance is provided; and

5. There will be an objective correlation between the asset allocations and other information generated by the online modeling service and data supplied by the member;

(d) investment advice, which consists of communicating optimized combinations of specific investment options across multiple participant-directed tax-deferred or taxable accounts, under the requirements that the advice is rendered on a regular basis to the member, pursuant to a mutual agreement with the member that the advice will serve as a primary basis for the member's investment decisions with respect to the member's multiple participant-directed account assets and is individualized based on the particular needs of the participant. Use of the terms "recommended" or "advice" or forms thereof, in an online modeling service does not constitute the rendering of advice in the absence of requirements set out in the preceding sentence.

(5) Another education provider furnishes one-on-one employee and employer education and counseling. More specifically, the company:

(a) Conducts seminars and workshops for employees and employers;

(b) Provides one-on-one, face-to-face, employee financial counseling;

(c) Provides telephone support of education and guidance regarding:

1. The defined contribution plan design and the investment options;

2. Defined benefit/defined contribution choice information;

3. Retirement planning; and

4. Support of the online modeling service through which investment guidance or investment advice is rendered.

(6) Other education providers focus on printed educational material. More specifically, the companies:

(a) Create the education campaign and the overall deployment strategy;

(b) Research, monitor, and measure the education campaign;

(c) Create the look, theme, and branding for the education campaign;

(d) Determine message positioning and delivery; and

(e) Assist in graphic design and the content of the website.

(7) Another education provider focuses on the MyFRS website. This provider coordinates software application integration and the design and content of the MyFRS website among the other educational service providers, the TPA, the Division, and the SBA.

(8) Investment options for participants in PEORP are provided by multiple providers hired by the SBA, in accordance with Section 121.4501(9)(a), Florida Statutes. Section 121.4501, Florida Statutes, is generally constructed as an unbundled architecture, meaning that neither the TPA nor the education providers are permitted to offer investment products, and as a consequence, the SBA has hired multiple institutional investment managers and providers of mutual funds. The SBA has also hired several bundled providers to provide various combinations of administration, education, and investments.

(9) The unbundled institutional investment managers manage assets in a particular asset class and in a particular style. They are responsible solely for money management.

(10) The bundled providers provide mutual funds or investment options in collective trusts which are their own funds or funds contracted for or from another money management group. Some bundled providers provide solely their own funds; others provide solely other fund family's funds; and others provide a combination.

(11) Each investment manager:

(a) Has authority and discretion, delegated by each manager's contract, to invest employee payroll contributions deposited with the custodian and recorded by the third party administrator for individual PEORP accounts;

(b) Transmits product values and performance data to the custodian; and

(c) Is monitored by manager monitoring guidelines incorporated in each of their contracts.

(12) An additional investment provider has been hired to offer annuities to retired participants.

(13) The custodian provides custodial services for certain assets of PEORP. The custodian is hired by the SBA, pursuant to Section 121.4501(8), Florida Statutes.

(14) The custodian's primary responsibilities in acting as the custodian for the PEORP are to:

(a) Hold cash, non-cash and all securities delivered to it or which are held in accounts established by it, or in the Federal Reserve book-entry system;

(b) Invest contributions that it receives, transfer amounts among investment funds, or liquidate securities, after receipt of proper instructions from the SBA, TPA, or Investment Managers;

(c) Release and deliver securities held as directed by the SBA;

(d) Maintain a database of securities registered in the name of the PEORP;

(e) Remit or credit income;

(f) Communicate with the SBA regarding registered investment company shares and fund securities;

(g) Lend securities;

(h) Determine the value of assets; and

(i) Calculate rates of return of investment products.

(15) In accordance with Section 121.4501(8)(e)1., Florida Statutes, the SBA has hired consultants to assist the SBA in the implementation and the operational phases for PEORP. Their responsibilities are to:

(a) Assist in the selection process for the third party administrator, the educational vendors, and the investment product providers;

(b) Assist in all general investment product reviews;

(c) Assist in the evaluation and selection of annuity product providers;

(d) Consult on all phases of the asset transfer program, the educational program, and general PEORP matters;

(e) Consult on unbundled investment fund design;

(f) Assist in the selection and evaluation of all investment product providers;

(g) Assist in developing and implementing investment product manager monitoring guidelines; and

(h) Make recommendations for retention and termination of investment product providers.

Specific Authority 121.4501(8)(a) FS. Law Implemented 121.4501(4),(8)(b),(e)1.,(9)(a),(10) FS. History-New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Kevin SigRist, Senior Investment Officer-Office of Defined Contribution Programs, State Board of Administration

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Trustees of the State Board of Administration

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 24, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 7, 2004

STATE BOARD OF ADMINISTRATION

RULE TITLE: Policy Statement

RULE NO.: 19-14.001

PURPOSE AND EFFECT: This rule is promulgated to implement a policy adopted by the Trustees of the State Board of Administration regarding support for non-Florida Retirement System defined contribution programs.

SUMMARY: Proposed new Rule 19-14.001, F.A.C., adopts a policy statement approved by the Trustees regarding support for non-Florida Retirement System defined contribution programs.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The Board has prepared a statement and found the cost to be minimal.

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: 121.4501(8)(a), 215.52 FS.

LAW IMPLEMENTED: 112.215(4), 121.055(6)(f)2., 121.35(6)(c), 215.515 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: 2:00 p.m. – 4:30 p.m., Monday, August 2, 2004

PLACE: Room 116 (Hermitage Conference Room), 1801 Hermitage Blvd., Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Cindy Gokel, Assistant General Counsel, State Board of Administration, P. O. Drawer 13300, Tallahassee, FL 32317-3300, (850)413-1199

THE FULL TEXT OF THE PROPOSED RULE IS:

19-14.001 Policy Statement.

The "Policy Statement on Support of Certain Non-FRS Defined Contribution Programs," as approved by the Trustees of the State Board of Administration, is hereby adopted and incorporated by reference.

Specific Authority 121.4501(8)(a), 215.52 FS. Law Implemented 112.215(4), 121.055(6)(f)2., 121.35(6)(c), 215.515 FS. History-New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Kevin SigRist, Senior Investment Officer-Office of Defined
Contribution Programs, State Board of Administration
NAME OF SUPERVISOR OR PERSON WHO APPROVED
THE PROPOSED RULE: Trustees of the State Board of
Administration
DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: June 24, 2004
DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: May 7, 2004

AGENCY FOR HEALTH CARE ADMINISTRATION

Division of Health Quality Assurance

RULE TITLES: Spontaneous Fetal Demise
RULE NO.: 59A-11.0125

PURPOSE AND EFFECT: The Agency proposes to amend rule 59A-11.0125, Florida Administrative Code, consistent with provisions of Section 383.33625, F.S. The statute provides for adoption of rules to develop forms to be used for notifications and elections by health care facilities.

SUMMARY: The proposed rule establishes procedures and a form to be used by health care facilities to provide notification to a mother of the options available for the disposition of fetal remains in the event of a spontaneous fetal demise occurring after a gestation period of less than 20 completed weeks.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None 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: 383.33625(6) FS.

LAW IMPLEMENTED: 383.33625 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., August 2, 2004

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building #3, Conference Room D, Tallahassee, FL 32303

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bill McCort, Bureau of Health Facility Regulation, 2727 Mahan Drive, Tallahassee, Florida, (850)487-0641

THE FULL TEXT OF THE PROPOSED RULE IS:

59A-11.0125 Spontaneous Fetal Demise.

When a spontaneous fetal demise occurs after a gestation of less than 20 completed weeks, the health care facility identified in Section 383.33625(4), F.S., shall follow the provisions of that section and shall provide AHCA Form 3100-0006, which

is incorporated by reference, to the mother for her completion. A copy of the signed and completed form shall be retained in the mother's birth center file and shall be available for review by the Agency or Department of Health.

Specific Authority 383.33625(6) FS. Law Implemented 383.33625 FS. History-New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Bill McCort, Bureau of Health Facility Regulation, Division of Health Quality Assurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jeffrey N. Gregg, Chief, Bureau of Health Facility Regulation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 2, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 30, 2004

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Department of Environmental Protection are 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

Division of Medical Quality Assurance

RULE TITLES: Citations
Issuance of Citations
Penalties
RULE NOS.: 64B-6.001
64B-6.002
64B-6.003

PURPOSE AND EFFECT: The Department proposes to promulgate unlicensed activity citations, violations and penalties rules pursuant to Section 456.065, F.S.

SUMMARY: The Department deems it necessary to set forth regulatory rules regarding the unlicensed practice of health care professions.

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: 456.065 FS.

LAW IMPLEMENTED: 456.065 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE NEXT AVAILABLE ISSUE OF THE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Nancy Snurkowski, Department of Health, 4052 Bald Cypress Way, Bin A-02, Tallahassee, Florida 32399.

THE FULL TEXT OF THE PROPOSED RULES IS:

64B-6.001 Citations.

(1) The Department may impose by citation an administrative penalty not to exceed \$5000 per incident for violations of Chapter 456, F.S., or any statute or rule adopted pursuant thereto, that relates to the practice of a profession regulated by the Department.

(2) Definitions as used in this rule:

(a) “Citation” means an instrument which meets the requirements set forth in Section 456.065, F.S., and which is served upon a person or entity for the purpose of assessing a penalty in an amount established by rule.

(b) “Department” means the Department of Health.

(c) “Service” for the purposes of this rule means personal service on the subject or by mailing the citation to the last known address of the subject or to the subject’s place of practice.

(d) “Subject” means a person, as defined in Section 1.01, Florida Statutes, alleged to have committed a violation of statute and/or rule.

Specific Authority 456.065 FS. Law Implemented 456.065 FS. History–New _____.

64B-6.002 Issuance of Citations.

(1) In addition to the remedies available to the Department under Section 456.065(2)(a), F.S., the Department may impose by citation an administrative penalty for violations of Chapter 456, F.S., or the applicable practice acts, or rules promulgated pursuant thereto.

(2) The contents of the citation shall comply with the requirements of Section 456.065(2)(b), F.S.

(3) Multiple violations of Chapter 456, F.S., the applicable professional practice acts or the rules promulgated thereto may be contained in a single citation or a separate citation may be issued for each violation or per each incident.

(4) Each day that the unlicensed practice continues shall constitute a separate violation.

(5) The Department shall be entitled to recover the costs of investigation and prosecution in addition to the fine levied pursuant to the citation.

(6) The citation becomes a Final Order of the Department within 30 days of service if the subject fails to dispute the issuance.

Specific Authority 456.065 FS. Law Implemented 456.065 FS. History–New _____.

64B-6.003 Penalties.

For the purposes of this rule only, the following violations with accompanying penalty may be disposed of by citation:

(1) Violations that form the basis of a misdemeanor in the second degree, as determined by the applicable statutes, shall result in a penalty of \$500 for the first offense. The fine for a second offense shall be \$1,000. A third offense or more shall be fined the maximum penalty of \$5,000.

(2) Violations that form the basis of a misdemeanor in the first degree, as determined by the applicable statute, shall result in a penalty of \$750 for the first offense. The fine for a second offense shall be \$1,500. A third offense or more shall be fined the maximum penalty of \$5,000.

(3) Violations that form the basis of a felony in the third degree, as determined by the applicable statute, shall result in a penalty of \$1,000 for the first offense. The fine for a second offense shall be \$2,000. A third offense or more shall be fined the maximum penalty of \$5,000.

(4) Violations that form the basis of a felony in the second degree, as determined by the applicable statute, shall result in a penalty of \$5,000, the maximum allowed per incident or violation.

(5) The costs the Department may recover for the investigation and prosecution shall be the actual dollar amount up to and including the day of service of the citation. If personal service is method of service, the Department investigator will determine the actual cost at the time of service of the citation on the subject.

Specific Authority 456.065 FS. Law Implemented 456.065 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Amy Jones, Division Director

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Amy Jones, Division Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 7, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 25, 2004

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Substance Abuse and Mental Health Programs

RULE TITLES:	RULE NOS.:
Applicability	65E-14.001
Retention and Access Requirements	
for Records	65E-14.002
Unit Cost Method of Payment	65E-14.021
Data Requirements	65E-14.022

PURPOSE AND EFFECT: Chapter 65E-14, F.A.C., entitled Community Substance Abuse and Mental Health Services – Financial Rules, is being amended to make improvements and

corrections to the comprehensive revisions recently made to the substance abuse and mental health contracting system and financial rule, based upon input from departmental staff.

SUMMARY: Chapter 65E-14, F.A.C., is being amended to: clarify the definition of matching; clarify the definition of a "Third Party Payer"; update the records retention requirements; clarify the definition of a Direct Staff Hour; add a new definition, the Clubhouse Staff Hour; make changes in the unit of measure used for the Mental Health Clubhouse; make changes in the data elements for the Mental Health Clubhouse cost center; adjust the maximum unit cost rate for the Mental Health Clubhouse; update the description of outpatient detoxification services; correct a typographical error in a reference to staffing levels; clarify the number of days permitted for advance notification that must be given to the department prior to changing the Program Description; correct a typographical error regarding the non-direct staff hour productivity and utilization standard; extend to two decimal places the standard percentages used to project the contractor's minimum utilization standards for service capacity; add additional parameters for cost center funding flexibility; add new annualized standard units and productivity requirements for the Mental Health Clubhouse; and update the publication dates, edition and version numbers on administrative forms and data pamphlet, and their descriptions, as incorporated into the rule by reference that need revision.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: An estimate of the regulatory cost was not prepared for this rule.

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

SPECIFIC AUTHORITY: 394.78(1),(6), 397.321(5) FS.

LAW IMPLEMENTED: 216.181(16), 394.66(9),(12), 394.74(2)(b),(3)(d),(e),(4), 394.77, 394.78(1),(6), 397.321(10), 402.73(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:

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.

TIME AND DATE: 10:00 a.m., August 2, 2004

PLACE: The Department of Children and Family Services, 1309 Winewood Boulevard, Building 6, Conference Room 335, Tallahassee, Florida 32399-0700

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Larry Ochalek, Senior Management Analyst II, The Department of Children and Families, 1309 Winewood Blvd., Building 6, Room 307, (850)414-1500, e-mail: larry_ochalek@dcf.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

65E-14.001 Applicability.

(1) No change.

(2) Definitions as used in this part, unless the context clearly requires otherwise.

(a) through (d) No change.

(e) "Matching" means the value of third-party funds and in-kind contributions and resources received, expended and identified by the contractor to defray 25 percent of allowable costs as a result of operating contracted programs pursuant to these rules.

(f) through (y). No change.

(z) "Third Party Payer" means commercial insurers such as workers' compensation, CHAMPUS/VA, Medicare, Health Maintenance Organizations, Managed Care Organizations, or other payers that are liable to pay for services on behalf of a specific client. Third party payers are liable to the extent that they are required by contract or law to participate in the cost of providing services to a specific client.

(aa) through (ff) No change.

Specific Authority 394.74, 394.77, 394.78(1), 397.321(5) FS. Law Implemented 394.74, 394.77, 397.481 FS. History-New 2-23-83, Amended 2-25-85, Formerly 10E-14.01, Amended 7-29-96, Formerly 10E-14.001, Amended 7-1-03, 12-14-03,_____.

65E-14.002 Retention and Access Requirements for Records.

This rule applies to all financial and programmatic records, supporting documents, statistical records, and other records of contractors which are necessary to document expenditures, income and assets of the contractor.

(1) Length of Retention Period

(a) Except as provided in paragraph (1)(b), records shall be retained for 6 ~~5~~ years from the starting date specified in paragraph (2).

(b) If any litigation claim, negotiation, audit, or other action involving the records has been started before the expiration of the 6 ~~5~~-year period, the records shall be retained until completeness of the action and resolution of all issues which arise from such actions.

(2) through (4) No change.

Specific Authority 394.77, 397.03 FS. Law Implemented 394.77, 397.03 FS. History-New 2-23-83, Amended 2-25-85, Formerly 10E-14.02, 10E-14.002, Amended _____.

65E-14.021 Unit Cost Method of Payment.

This section provides guidelines and requirements for implementing a unit cost method of payment for substance abuse and mental health services.

(1) through (5)(a)2. No change.

3. Direct Staff Hour. This unit of measure represents the actual time spent on activities directly associated with a single client, including case staffings. Time may include travel if the travel is integral to a service event otherwise billable to the department. Direct staff hour units shall be paid on the basis of utilization, ~~except in the case of the mental health clubhouse services cost center, which shall be paid on the basis of availability.~~

4. through 9. No change.

10. Clubhouse Staff Hour. This unit of measure represents an hour of staff time in which one or more persons (Clubhouse members) are being provided with a service or activity within the Clubhouse or away from the Clubhouse. It may also include staff time spent on behalf of members away from the facility, such as, developing employment prospects or exploring housing alternatives. Staff time spent in travel on behalf of Clubhouse members or activities may also be included.

(6) through (7)(q)2. No change.

3. Unit of Measure – Clubhouse Staff ~~Direct Staff Hour~~

4. Data Elements:

a. Service Documentation – Duty Roster ~~Time Sheet~~

(I) Staff name and identification number ~~Recipient name and identification number.~~

(II) Date ~~Staff name and identification number.~~

(III) Hours on Duty – Beginning and ending time ~~Service date.~~

(IV) Cost Center ~~Duration.~~

(V) Program ~~Cost center.~~

(VI) Signature of Program Manager ~~Service (specify); and.~~

(VII) Program.

b. Audit Documentation. Recipient Service Chart:

(I) Staff name and identification number ~~Recipient name and identification number.~~

(II) Date ~~Staff name and identification number.~~

(III) Hours worked – Beginning and ending time ~~Service date.~~

(IV) Program. ~~Duration; and~~

(V) Cost Center ~~Service (specify).~~

(VI) Clubhouse Schedule.

(VII) Daily census log with date.

(VIII) Signature of Program Manager.

5. Maximum Unit Cost Rate: \$ 37.71 ~~\$10.50 for up to five hours per day.~~

(r) through (t) No change.

1. Description – Outpatient detoxification services utilize medication or a psychosocial counseling regimen that assists recipients in their efforts to withdraw from the physiological and psychological effects of the abuse of addictive substances. ~~They provide structured activities four (4) hours per day, seven (7) days per week.~~

2. through 5. No change.

(u) through (kk). No change.

(8)(a) through (d) 1.d. (II) (vii). No change

(viii) Staffing levels by type of service delivery position, unless the unit cost rate for the cost center is negotiated pursuant to paragraph 65E-14.021 (9)(b)(a) F.A.C.

(ix) through 4. No change

5. Advance notification must be given to the department ~~ten (10) calendar days prior to any changes to before any of the~~ Program Description elements specified in sub-sub-sub-subparagraphs 65E-14.021(8)(d)1.d.(II)(ix) and (x), and (III)(i)-(iii), F.A.C., ~~may be changed.~~ The Program Description shall be updated and resubmitted to the department within 10 calendar days of the end of any quarter in which a change in the Program Description occurs, except changes that pertain to sub-sub-sub-subparagraphs 65E-14.021(8)(d)1.d. (II)(iv), (vi), or (viii), F.A.C.

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

4. Productivity and Utilization Standards. The following standards shall be used to project the contractor's minimum service capacity on the Agency Capacity Report:

Unit of Measure	Standard Units (Annualized)	Standard %
Contact Hour	1,073 hours per FTE	51.59% 52%
Direct Staff Hour	1,252 hours per FTE	60.19% 60%
Non-Direct Staff Hour	1,430 1,413 hours per FTE	68.75% 70%
Staff Hour (Crisis Support / Emergency and Information and Referral)	2,080 hours per FTE	100%
Staff Hour (FACT)	1,788 hours per FTE	85.96% 86%
Bed-Day	365 Days	100%
24-hour Day	365 Days	85%
Facility Day	*	100%
4-hour Day	*	90%
Dosage	*	100%
<u>Mental Health Clubhouse Staff Hour</u>	<u>1,768 hours per FTE</u>	<u>85%</u>

* To be established through negotiation between the district and the contractor.

5. No change.

(c) through (d) No change.

b. The substance abuse and mental health program supervisors in the district or the region may increase from 15 percent to up to 30 percent the amount contractors may exceed the total non-TANF funding specified in the contract for an

individual cost center within a program and may further specify that funding may be added to that cost center but not subtracted from that cost center.

c. through e. No change.

4. through 6. No change.

(c) through (d) No change.

(11) The following forms are hereby incorporated by reference, copies of which may be obtained from the Substance Abuse Program Office, ATTN: PDSA, 1309 Winewood Blvd., Building 6, Tallahassee, Florida 32399-0700.

(a) through (b) No change.

(c) CF-MH 1043, Mar 2004 Agency Capacity Report, ~~Jul 2003~~ consisting of a thirteen-page form and four ~~three~~ pages of instructions.

(d) No change.

(e) CF-MH 1045, Mar 2004 Program Description, ~~Jul 2003~~ consisting of one page of instructions.

(f) CF-MH 1047, Nov Aug 2003 Monthly request for Non-TANF Payment/ Advance, consisting of a two ~~one~~ page form and two pages of instructions.

(g) CF-MH 1058, Nov Aug 2003 Monthly request for TANF Payment / Advance, consisting of a two ~~one~~ page form and two pages of instructions.

(h) CF-MH 1046, Mar 2004 Aug 2003 Worksheet for Request for Payment, for use with forms CF-MH 1047 and CF-MF 1058, consisting of a one page form and three pages of instructions.

(i) through (j) No change.

Specific Authority 394.78(1),(6), 397.321(5) FS. Law Implemented 216.181(16), 394.66(9),(12), 394.74(2)(b),(3)(d),(e),(4) 394.77, 394.78(1),(6), 397.321(10), 402.73(7) FS. History—New 7-1-03, Amended 12-14-03, _____.

65E-14.022 Data Requirements.

The following document is hereby incorporated by reference, copies of which may be obtained from the Substance Abuse Program Office, ATTN: PDSA, 1309 Winewood Blvd., Building 6, Tallahassee, Florida 32399-0700.

CFP 155-2, Mar 2004, ~~July 2003~~ Mental Health and Substance Abuse Measurement and Data Pamphlet, 5th Edition Version 4 2 consisting of 209 pages.

Specific Authority 394.78(1), 397.321(5) FS. Law Implemented 394.66(9), 394.74(3)(e), 394.77, 397.321(3)(c),(10) FS. History—New 7-1-03, Amended 12-14-03, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Larry Ochalek, Senior Management Analyst II, Substance Abuse Program Office

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Ken DeCerchio, MSW, C.A.P., Program Director of Substance Abuse and R. Ed Miles, Ph.D., Program Director of Mental Health

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 30, 2004

DATE NOTICE OF PROPOSED RULE PUBLISHED IN FAW: June 4, 2004, Vol. 30, No. 23

DEPARTMENT OF FINANCIAL SERVICES

Office of Insurance Regulation

RULE TITLE: Annual and Quarterly Reporting Requirements RULE NO.: 690-137.001

PURPOSE, EFFECT, AND SUMMARY: To adopt 2004 NAIC manuals.

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: 624.307, 624.308(1) FS.

LAW IMPLEMENTED: 624.307(1), 624.424(1) FS.

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

TIME AND DATE: 10:00 a.m., August 3, 2004

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kerry Krantz, Bureau of Life and Health Insurer Solvency, Office of Insurance Regulation, E-mail krantzkc@dfs.state.fl.us

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:

690-137.001 Annual and Quarterly Reporting Requirements.

(4) Manuals Adopted.

(a) Annual and quarterly statements shall be prepared in accordance with the following manuals, which are hereby adopted and incorporated by reference:

1. The NAIC's Quarterly and Annual Statement Instructions, Property and Casualty, 2004 ~~2003~~;

2. The NAIC's Quarterly and Annual Statement Instructions/Life, Accident and Health, 2004 2003; and

3. The NAIC's Quarterly and Annual Statement Instructions/Health, 2004 2003; and

4. The NAIC's Accounting Practices and Procedures Manual, as of March 2004 2003.

(b) No change.

Specific Authority 624.307, 624.308(1) FS. Law Implemented 624.307(1), 624.424(1) FS. History—New 3-31-92, Amended 8-24-93, 4-9-95, 4-9-97, 4-4-99, 11-30-99, 2-11-01, 4-5-01, 12-4-01, 12-25-01, 8-18-02, 7-27-03, Formerly 4-137.001, Amended _____.

NAME OF PERSON ORIGINATING RULE: Kerry Krantz, Bureau of Life and Health Insurer Solvency, Division of Insurer Services, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jovita Ashton, Bureau Chief, Bureau of Life and Health Insurer Solvency, Department of Insurance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 8, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 21, 2004

DEPARTMENT OF FINANCIAL SERVICES

Office of Insurance Regulation

RULE TITLE: NAIC Financial Examiners Handbook Adopted
 RULE NO.: 690-138.001
 PURPOSE, EFFECT, AND SUMMARY: To adopt 2004 NAIC manuals.

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(1) FS.

LAW IMPLEMENTED: 624.307(1), 624.316(1)(c) FS.

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

TIME AND DATE: 10:00 a.m., August 3, 2004

PLACE: Room 143, 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: Kerry Krantz, Bureau of Life and Health Insurer Solvency, Office of Insurance Regulation, e-mail: krantz@dfs.state.fl.us

THE FULL TEXT OF THE PROPOSED RULE IS:

690-138.001 NAIC Financial Examiners Handbook Adopted.

(1) The National Association of Insurance Commissioners Financial Condition Examiners Handbook Volume I (2004 2003) is hereby adopted and incorporated by reference.

Specific Authority 624.308(1) FS. Law Implemented 624.307(1), 624.316(1)(c) FS. History—New 3-30-92, Amended 4-9-97, 4-4-99, 11-30-99, 2-11-01, 12-25-01, 8-18-02, 7-27-03, Formerly 4-138.001, Amended _____.

NAME OF PERSON ORIGINATING RULE: Kerry Krantz, Bureau of Life and Health Insurer Solvency, Division of Insurer Services, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jovita Ashton, Bureau Chief, Bureau of Life and Health Insurer Solvency, Department of Insurance

DATE PROPOSED RULE APPROVED BY THE AGENCY HEAD: April 8, 2004

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 21, 2004

Section III
Notices of Changes, Corrections and
Withdrawals

DEPARTMENT OF BANKING AND FINANCE

Division of Finance

RULE NO.:	RULE TITLE:
3D-40.0271	Continuing Education Requirements for Mortgage Brokers, Loan Originators and Principal Representatives

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 29, No. 31, August 1, 2003, has been withdrawn.

DEPARTMENT OF BANKING AND FINANCE

Division of Finance

RULE NO.:	RULE TITLE:
3D-40.043	Mortgage Broker License Renewal and Reactivation

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 29, No. 31, August 1, 2003, has been withdrawn.