Section I
Notices of Development of Proposed Rules and Negotiated Rulemaking

DEPARTMENT OF STATE

Division of Library and Information Services

RULE TITLE: RULE NO.:
Library Grant Programs 1B-2.011

PURPOSE AND EFFECT: The purpose of this amendment is to add a Community Libraries in Caring grant program. Guidelines for this grant program are outlined in the application packet that contains information on eligibility requirements, application review procedures, evaluation and funding criteria, grant administration procedures and application forms.

SUBJECT AREA TO BE ADDRESSED: Guidelines for the Community Libraries In Caring grant program administered by the Division of Library and Information Services.

SPECIFIC AUTHORITY: 257.14, 257.15, 257.193 FS.

LAW IMPLEMENTED: 257.14, 257.15, 257.193 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (The hearing must be requested in writing by 5:00 p.m., Eastern Time, Tuesday, August 24, 2003. If not requested, this hearing will not be held.):

TIME AND DATE: 9:00 a.m., Wednesday, September 1, 2004

PLACE: Archives Conference Room, First Floor, State Library and Archives of Florida, R. A. Gray Building, 500 S. Bronough Street, Tallahassee, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT, IF AVAILABLE, IS: Judith A. Ring, Director, Division of Library and Information Services, R. A. Gray Building, 500 South Bronough Street, Tallahassee, FL 32399-0250, (850)245-6600, Suncom 205-6600

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

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE TITLES: RULE NOS.:
Specific Exemptions 12A-1.001
Charges by Dealers Who Adjust, Apply, Alter, Install, Maintain, Remodel, or Repair Tangible Personal Property 12A-1.006
Sales by Architects, Interior Designers, and Interior Decorators 12A-1.0515

PURPOSE AND EFFECT: The purpose of the amendments to Rule 12A-1.001, F.A.C. (Specific Exemptions), and to Rule 12A-1.006, F.A.C. (Charges by Dealers Who Adjust, Apply, Alter, Install, Maintain, Remodel, or Repair Tangible Personal Property), is to remove guidelines regarding the taxability of fees charged by interior decorators or designers and the taxability of sales of tangible personal property that will be provided in Rule 12A-1.0515, F.A.C., as created.

The purpose of the creation of Rule 12A-1.0515, F.A.C. (Sales by Architects, Interior Designers, and Interior Decorators), is to provide guidelines to architects, interior designers, and interior decorators regarding fees charged for services rendered, for sales of tangible personal property in conjunction with services rendered, and for the performance of real property improvement contracts, including mixed contracts for tangible personal property and improvements to real property. The proposed new rule: (1) defines, for purposes of the rule, the terms “architect,” “interior designer,” and “interior decorator”; (2) provides guidelines and establishes criteria for when fees charged by an architect, interior designer, or interior decorator for rendering services are not in conjunction with the sale of tangible personal property and not subject to tax; (3) provides guidelines for when an architect, interior designer, or interior decorator is required to collect tax on sales of tangible personal property, including services rendered in conjunction with the sale of such property; (4) provides that the total sales price subject to tax includes separately itemized charges or fees and provides examples of such taxable charges or fees; (5) provides guidelines regarding trade discounts received by an architect, interior designer, or interior decorator; (6) provides that sales of three-dimensional scale, working, or other models are subject to tax when title or possession is transferred to the client; (7) provides that models used to illustrate design concepts to a client without actual transfer of the model to the client are not sales of tangible personal property to the client; (8) provides that an architect, interior designer, or interior decorator who sells tangible personal property is required to register with the Department as a dealer; (9) defines the term “improvement to realty” and provides guidelines for the taxability of contracts for improvements to realty, including when an architect, interior designer, or interior decorator is required to pay sales or use tax on items used in the performance of such contracts; (10) provides guidelines for the taxability of mixed contracts for tangible personal property and improvements to realty; and (11) provides recordkeeping requirements, including records required to be maintained by an architect, interior designer, or interior decorator to establish the taxability of services rendered, sales of tangible personal property, and purchases of property used in the performance of their services.

SUBJECT AREA TO BE ADDRESSED: The subject of this workshop is the proposed guidelines provided to architects, interior designers, and interior decorators regarding the

application of tax to their services, their sales of tangible personal property, and the performance of real property contracts, including mixed contracts for tangible personal property and for improvements to real property.

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

LAW IMPLEMENTED: 212.02(4),(10),(12),(13),(14)(a),(15),(16),(17),(19),(20),(21), 212.05, 212.06(1),(2), (5)(a)1.,(14), 212.07(1), 212.08(6), (7)(f),(h),(q),(v),(x),(cc), 212.13(1),(2),(3), 212.18(3), 212.21(2) FS.

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

TIME AND DATE: 2:00 p.m., August 24, 2004

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

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

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12A-1.001 Specific Exemptions.

(1) No change.

(2) STENOGRAPHERS ~~SERVICE TRANSACTIONS~~.

~~(a)1. An interior decorator's fee is taxable as part of the selling price under Section 212.02(16), F.S., or as a part of the cost price under Section 212.02(4), F.S., and cannot be exempted as a professional or personal service charge when the transaction involves the sale of tangible personal property. This is true when the fee is paid in the form of a trade discount, as is the case when a supplier grants the decorator a trade discount and the decorator in turn bills the client for the full list price. The decorator fee is also taxable when it appears as an amount added to the decorator's cost when billed to the client for tangible personal property on a cost plus basis.~~

~~2. If the decorator's fee is solely for designing the interior and exterior decorative scheme or for advising his clients and recommending colors, paints, wallpaper, fabrics, brands, sources of supply, etc., and there is no sale of tangible personal property involved, then such fee would be exempt as a professional or personal service transaction.~~

~~3. In some instances, the decorator may receive a fixed sum, which is not in any way contingent upon the sale of tangible personal property to the same client. In such cases the decorator's fee cannot be considered as a part of the selling price of the property sold because there is no connection between the transactions.~~

~~4. If the decorator's client reimburses the decorator for the payroll cost of personnel on the decorator's payroll assigned to a specific project, the duties performed by such employees will determine whether or not this item is taxable. For example, if these employees were engaged in painting murals on walls, etc., the charge made for their services is exempt, whereas, if these employees fabricate tangible personal property such as making bedspreads or draperies then the charge for their labor is taxable.~~

~~(b) When an architect or engineer furnishes his client or customer with a scale, working, or other model the total amount he charges his customer therefor is taxable. This constitutes the sale of tangible personal property and is not exempt as an inconsequential element of a personal service transaction.~~

(c) No change.

(3) through (6) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(10),(12),(16),(20),(21), 212.05, 212.08(6),(7)(f),(h),(q),(v),(x),(cc) FS. History–Revised 1-7-68, 1-7-70, Amended 1-17-71, Revised 6-16-72, Amended 7-19-72, 12-11-74, 5-27-75, 10-21-75, 9-7-78, 9-28-78, 10-18-78, 9-16-79, 2-3-80, 6-3-80, 7-7-80, 10-29-81, 12-3-81, 12-31-81, 7-20-82, 11-15-82, 10-13-83, 4-12-84, Formerly 12A-1.01, Amended 7-9-86, 1-2-89, 12-1-89, 7-7-92, 9-14-93, 5-18-94, 12-13-94, 3-20-96, 4-2-00, 6-28-00, 6-19-01, 10-2-01(1), (2), 10-2-01(2)-(7), 10-2-01(3)-(7), 8-1-02, _____.

12A-1.006 Charges by Dealers Who Adjust, Apply, Alter, Install, Maintain, Remodel, or Repair Tangible Personal Property.

(1) through (11) No change.

~~(12) Charges by an interior decorator are exempt when no materials or supplies are used.~~

(13) through (18) renumbered (12) through (17) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(4),(15),(16),(17),(20), 212.05(1), 212.06(1),(2),(5)(a)1., 212.08(7)(v), 212.21(2) FS. History–Revised 10-7-68, 6-16-72, 12-11-74, 12-31-81, Formerly 12A-1.06, Amended 7-7-92, 10-17-94, _____.

12A-1.0515 Sales by Architects, Interior Designers, and Interior Decorators.

(1) SCOPE. This rule is intended to clarify the application of tax to services performed by architects, interior designers, and interior decorators. This rule is also intended to clarify how tax applies to sales of tangible personal property, services that are included in the sales price of tangible personal property, the performance of real property contracts by such persons, and mixed contracts for tangible personal property and for the improvement of real property.

(2) DEFINITIONS. For purposes of this rule, the following terms are defined:

(a)1. "Architect" means any person required to be licensed with the Department of Business and Professional Regulation, as provided in Part I, Chapter 481, F.S., to engage in the practice of "architecture." "Architecture," as defined in Section 481.203(6), F.S., means the rendering or offering to render services in connection with the design and construction of a structure or structures which have as their principal purpose

human habitation or use, and the use of space within and surrounding such structures. These services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.

2. "Architects" licensed with the Department of Business and Professional Regulation may practice "interior design."

(b) "Interior designer" means any person who is required to be licensed with the Department of Business and Professional Regulation to practice interior design, as provided in Part I, Chapter 481, F.S. "Interior design," as defined in Section 481.203(8), F.S., means designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to nonstructural elements of a building or structure. Examples of interior design are reflected ceiling plans, space planning, furnishings, and the fabrication of nonstructural elements within and surrounding interior spaces of buildings.

(c) "Interior decorator" means any person who performs interior decorator services. "Interior decorator services," as defined in Section 481.203(15), F.S., includes the selection or assistance in selection of surface materials, window treatments, wallcoverings, paint, floor coverings, surface-mounted lighting, surface-mounted fixtures, and loose furnishings not subject to regulation under applicable building codes.

(3) FEES CHARGED FOR SERVICES RENDERED.

(a) Fees charged by an architect, interior designer, or interior decorator for rendering services described under the licensing provisions of Chapter 481, F.S., are not subject to tax when no sale of tangible personal property occurs in conjunction with the services rendered. Structural plans, study designs, drawings, blueprints, or specifications furnished by the architect, interior designer, or interior decorator are provided as a part of the services rendered.

(b) Fees charged by an architect, interior designer, or interior decorator to his or her client are solely for services rendered and not in conjunction with the sale of tangible personal property to the client when all of the following conditions are met:

1. The fee is allocated in the contract to architecture, interior design, or interior decorator services;

2. The client is not obligated to purchase tangible personal property from the architect, interior designer, or interior decorator;

3. The architect, interior designer, or interior decorator does not transfer to the client title or possession of any tangible personal property that the architect, interior designer, or interior decorator designs or creates specifically for the client as part of the services rendered;

4. The client is obligated to pay the architecture, interior design, or interior decorator service fee regardless of whether the client purchases any tangible personal property from the architect, interior designer, or interior decorator under the contract;

5. The amount of the fee for architecture, interior design, or interior decorator services is not contingent upon whether the client purchases any tangible personal property from the architect, interior designer, or interior decorator or upon the sales price of any tangible personal property the client purchases from the architect, interior designer, or interior decorator;

6. The contract provides for separate pricing of any tangible personal property that may be purchased by the client from the architect, interior designer, or interior decorator; and

7. The fee for architecture, interior design, or interior decorator services is separately stated from the sales price of any tangible personal property on bills, statements, or invoices issued to the client for the property.

(4) FEES FOR SERVICES RENDERED IN CONJUNCTION WITH SALES OF TANGIBLE PERSONAL PROPERTY.

(a) Architects, interior designers, and interior decorators are required to collect tax on the total sales price charged to the client on any sale of tangible personal property that does not become a part of real property.

(b) Fees charged by architects, interior designers, or interior decorators in conjunction with the sale of tangible personal property are a part of the total sales prices for the tangible personal property and are subject to tax.

(c) The total sales price of tangible personal property includes any separately itemized charges or fees for:

1. The cost of the property;

2. The design or creation of the property;

3. The cost of materials and supplies used in providing or installing the property;

4. The cost of labor or other services to deliver and install the property;

5. The recovery of losses incurred;

6. Any expenses incurred in providing the property to the client; and

7. Any profit or markup over the architect's, interior designer's, or interior decorator's costs or expenses factored into the price to the client.

(d) Trade discounts received by the architects, interior designers, or interior decorators from suppliers of tangible personal property that are not passed on to the client do not reduce the taxable sales price of the property sold to the client.

(e) Any person who provides a three-dimensional scale, working, or other model as part of his or her services to a client is selling tangible personal property and is required to collect tax on the total sales price charged to the client, as provided in paragraph (c). This paragraph applies only if title or possession of the scale, working, or other model is transferred to the client and does not apply to models used to illustrate design concepts to a client without actual transfer of the model to the client.

(f) Architects, interior designers, and interior decorators that sell tangible personal property to their clients are required to register as dealers with the Department to collect and report sales and use tax. (See Rule 12A-1.060, F.A.C.) Registered dealers who sell tangible personal property may extend a copy of their Annual Resale Certificate to purchase items tax-exempt for purposes of resale to their clients and collect tax on the total sales price to the client.

(5) IMPROVEMENTS TO REAL PROPERTY.

(a) For purposes of this rule, "improvement to real property" includes the activities of building, erecting, constructing, altering, improving, repairing, or maintaining real property.

(b) Any person who enters into a contract for the improvement to real property is generally the ultimate consumer of materials and supplies used to perform such improvement to real property. However, when a contractor enters into a "retail sale plus installation contract," the contractor, including architects, interior designers, or interior decorators, is selling tangible personal property to the client.

(c) A "retail sale plus installation contract" is a contract in which the contractor agrees to sell specifically described and itemized materials and supplies at an agreed price or at the regular retail price and to complete the work either for an additional agreed price or on the basis of time consumed. All the materials must be itemized in the contract before the work begins. The provisions of this rule do not apply to retail sale plus installation contracts. Guidelines for such contracts are provided in paragraph (3)(d) of Rule 12A-1.051, F.A.C.

(d) When architects, interior designers, or interior decorators enter into contracts with their clients to furnish and install tangible personal property that becomes a part of real property, no tax is due on the contract price charged to the client. The architect, interior designer, or interior decorator is required to:

1. Pay sales or use tax on all tangible personal property the architect, interior designer, or interior decorator purchases to be incorporated into a real property improvement; and

2. Pay tax on the cost of all materials the architect, interior designer, or interior decorator fabricates for use in performing such contracts, as provided in Rule 12A-1.043, F.A.C.

(e) Architects, interior designers, and interior decorators are permitted to extend a copy of their Annual Resale Certificates to selling dealers to purchase items of tangible personal property that the architect, interior designer, or interior decorator will incorporate into real property tax-exempt when the applicable tax, as provided in paragraph (d), is paid directly to the Department.

(f) When the architect, interior designer, or interior decorator uses subcontractors to install tangible personal property that becomes a part of realty, the subcontractor is responsible for paying the applicable tax due on the materials and supplies purchased by the subcontractor and used in installing the items. When the architect, interior designer, or interior decorator furnishes items, materials, and supplies to the subcontractor for installation, the architect, interior designer, or interior decorator is required to pay tax on the items purchased and provided to the subcontractor.

(6) MIXED CONTRACTS.

(a)1. For the purposes of this rule, a "mixed contract" is a contract that includes both real property work and tangible personal property. A mixed contract is one that involves a real property improvement and also involves providing tangible personal property that remains tangible personal property and does not become a part of real property.

2. Taxability of a mixed contract depends on the predominant nature of the work performed under the contract and upon the contract terms. The determination of the predominant nature of a contract will depend upon the facts and circumstances of each case. Consideration will be given to the description of the project and the responsibilities of the architect, interior designer, or interior decorator as set forth in the contract. Consideration will also be given to the relative cost of performance of the real property and tangible personal property components of the contract.

(b)1. When a mixed contract clearly allocates the contract price among the various elements of the contract, and such allocation is bona fide and reasonable in terms of the costs of materials and nature of the work to be performed, taxation will be in accordance with the allocation. The elements of the contract that remain tangible personal property when installed will be treated as sales of tangible personal property. The elements of the contract that constitute improvements to real property will be treated as improvements to real property.

2. For example, an interior designer contracts to design the interior elements of a residence. The contract provides for separately stated prices for the installation of flooring, lighting, cabinetry, and other fixtures to be installed in the residence and for approved furnishings and accessories. The furniture and accessories remain tangible personal property. However, the flooring, lighting, cabinetry, and other fixtures become realty when installed. The interior designer may purchase the furniture and accessories tax-exempt at the time of purchase by issuing a copy of its Annual Resale Certificate to the selling dealer and collect tax on the total sales price of the items charged to the client. The interior designer is required to pay tax on all the materials and supplies used to install the flooring,

lighting, cabinetry, and other fixtures within the residence, and no tax should be charged to the client on the price of those portions of the contract.

(c) When the predominant nature of a mixed contract is a contract for improvements to real property and the contract does not allocate the purchase price as provided in paragraph (b), taxability will be determined as if the contract were entirely for improvements to real property, as provided in subsection (5).

(d) When the predominant nature of a mixed contract between an architect, interior designer, or interior decorator and the client is a contract for sales of tangible personal property and the contract does not allocate the purchase price as provided in paragraph (b), taxability of purchases and sales of tangible personal property by the architect, interior designer, or interior decorator will be determined entirely as sales of tangible personal property to the client, as provided in subsection (4).

(e) If an architect, interior designer, or interior decorator hires a subcontractor to provide a real property fixture or improvement, that subcontractor is required to pay tax on the subcontractor's purchases of tangible personal property incorporated into the improvement regardless of the predominant nature of the prime contract between the architect, interior designer, or interior decorator and the client.

(7) RECORDKEEPING REQUIREMENTS.

(a) Architects, interior designers, and interior decorators who provide architecture, interior design, or interior decorator services and make sales of tangible personal property that are not in conjunction with services rendered to the same client must maintain copies of contracts, agreements, billings, invoices, and other documentation necessary to evidence that the charges for services rendered are not in conjunction with the sale of the property to the client. Architects, interior designers, and interior decorators must also maintain adequate records to establish the taxability of their services rendered, sales of tangible personal property, and purchases of property used in the performance of their services or in performance of contracts for improvement to real property until tax imposed by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S. Upon request, records must be made available to the Department.

(b) Electronic storage by the architect, interior designer, or interior decorator of required documentation through use of imaging, microfiche, or other electronic storage media will be sufficient compliance with the provisions of this subsection.

Cross Reference: Rule 12A-1.012, F.A.C.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(10)(h),(12),(13),(14)(a),(15)(a),(16),(19),(20),(21), 212.05, 212.06(14), 212.07(1), 212.13(1),(2),(3), 212.18(3) FS. History–New _____.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE TITLES:	RULE NOS.:
Assignment of Service Addresses to Local Taxing Jurisdictions; Liability for Errors; Avoidance of Liability Through Use of Specified Methods; Reduction in Collection Allowance for Failure to Use Specified Methods	12A-19.070
Department of Revenue Electronic Database	12A-19.071
Certification of Service Address Databases	12A-19.072
Use of Enhanced Zip Code Method to Assign Service Addresses to Local Taxing Jurisdictions	12A-19.073
Public Use Forms	12A-19.100

PURPOSE AND EFFEECT: The Communications Services Tax Simplification Law (Chapter 202, F.S.) requires that communications services dealers must collect and remit local communications services taxes based on the rate of the local taxing jurisdiction in which customer service addresses are located. The Department of Revenue is required to develop and maintain an electronic database in which local service addresses are assigned to local jurisdictions, and local governments are required to provide information for inclusion in the database. Use of certain methods to assign service addresses, including use of a database that has been certified by the Department of Revenue as meeting statutory accuracy standards, entitles a dealer to a higher collection allowance and to protection against liability for taxes, interest, and penalties resulting from erroneous service address assignments. The promulgation of these proposed rules ensures the following: (1) that communications services tax dealers are informed of their obligations concerning the assignment of customer service addresses, of the methods of assigning addresses that will entitle dealers to protection against liability, and of the methods of assigning addresses that will entitle a dealer to a higher collection allowance; (2) that the procedures for the Department and local governments to maintain the accuracy of the database on an on-going basis are available; (3) that the procedures for application for certification by the Department of databases used by communications services tax dealers are available; and (4) that interested parties are aware that the applicable forms have been incorporated into Rule 12A-19.100, F.A.C.

The purpose of the proposed creation of Rule 12A-19.070, F.A.C. (Assignment of Service Addresses to Local Taxing Jurisdictions; Liability for Errors; Avoidance of Liability Through Use of Specified Methods; Reduction in Collection Allowance for Failure to Use Specified Methods), is to provide guidelines on: (1) the requirement that communications services dealers assign customer service addresses to local taxing jurisdictions; (2) the use of certain databases to avoid liability for errors in customer service address assignments; (3) the due diligence standard applicable to dealers using

databases that provide protection from liability for errors in assigning customer service addresses; and (4) the collection allowance available depending on the database used by a communications services dealer.

The purpose of the proposed creation of Rule 12A-19.071, F.A.C. (Department of Revenue Electronic Database), is to provide guidelines on: (1) the electronic customer service address database maintained by the Department of Revenue; (2) the procedures for local taxing jurisdictions to request changes to the Department of Revenue database; and (3) procedures for any substantially affected person to object to the assignment of a customer service address in the Department of Revenue database.

The purpose of the proposed creation of Rule 12A-19.072, F.A.C. (Certification of Service Address Databases), is to provide guidelines on the standards and procedures for certification of a customer service address database developed by a communications services dealer or a vendor.

The purpose of the proposed creation of Rule 12A-19.073, F.A.C. (Use of Enhanced Zip Code Method to Assign Service Addresses to Local Taxing Jurisdictions), is to provide guidelines on the use of an enhanced zip code method to assign customer service addresses.

These proposed rules adopt and incorporate by reference two (2) sets of instructions that are incorporated into the on-line Department of Revenue service address database. The on-line instructions incorporated by reference are the "Guide for Address Change Requests" and the "Instructions for Preparing and Submitting Customer Address Files for Certification Testing." The rules also reference the following forms that are currently incorporated, by reference, in Rule 12A-19.100, F.A.C. (Public Use Forms): (1) DR-700012, "Application for Certification of Communications Services Database"; and (2) DR-700020, "Notification of Method Employed to Determine Taxing Jurisdiction (Communications Services Tax)."

The purpose of the proposed amendments to Rule 12A-19.100, F.A.C. (Public Use Forms) is to incorporate, by reference, the following forms used by the Department in the administration of the communications services tax: (1) DR-700022, "Local Communications Services Tax Notification of Jurisdiction Change"; and (2) DR-700025, "Objection to Communications Services Tax Electronic Database Service Address Assignment."

SUBJECT AREA TO BE ADDRESSED: The subject of this rule development workshop is the implementation of requirements regarding situsing service addresses to the appropriate local taxing jurisdiction and the procedures for certification of databases. These requirements were the subject of a rule development workshop on October 17, 2002. The draft rule text was amended in response to comments received at that workshop, and a second rule development workshop was held on July 31, 2003. Both local government and industry representatives attended the second workshop and offered comments. The rule text has been further amended in response to some of those comments, and the subject of this workshop is the rule text as amended.

SPECIFIC AUTHORITY: 202.151, 202.16(2), 202.26(3)(b),(c),(d),(f),(g), 202.28(1) FS.

LAW IMPLEMENTED: 202.11(4),(11),(12), 202.13(2), 202.151, 202.16(2),(4), 202.17(6), 202.22, 202.23, 202.28, 202.34(1)(a),(3),(4)(c), 202.35(3) FS.

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

TIME AND DATE: 9:30 a.m., August 24, 2004

PLACE: Room 118, Carlton Building, 501 S. 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 at (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 DEVELOPMENT IS: Jennifer Silvey, Senior Attorney, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, (850)922-4727

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12A-19.070 Assignment of Service Addresses to Local Taxing Jurisdictions; Liability for Errors; Avoidance of Liability Through Use of Specified Methods; Reduction in Collection Allowance for Failure to Use Specified Methods.

(1)(a) Dealers of communications services that are required to collect local communications services taxes must assign each customer service address to a specific local taxing jurisdiction for purposes of determining the appropriate local communications services tax rate to be applied to sales made to that address. Local communications services taxes must be collected and remitted for each service address in accordance with the service address assignments in the effective communications services tax Address/Jurisdiction Database, which is the official electronic database maintained by the Department that is posted 90 days prior to its adoption and becomes effective every January 1 and July 1, as discussed in Rule 12A-19.071, F.A.C. Except as otherwise provided in subsection (2), a dealer is liable for any additional local communications services taxes, interest, and penalties that are due as a result of assigning service addresses to incorrect local taxing jurisdictions when the correct local taxing jurisdiction's tax rate exceeds the incorrectly assigned local taxing jurisdiction's tax rate.

(b) In determining the liability for any additional local communications services taxes, interest, and penalties of a dealer who has failed to assign a service address to the correct local taxing jurisdiction, the Department will take into account any amount of local communications services tax that was collected and erroneously assigned by the dealer to another local taxing jurisdiction. The Department will reallocate and redistribute such amounts between the local taxing jurisdictions involved to apply the payment of any additional local communications services taxes to the correct local taxing jurisdiction. Interest and penalties will be applied only to the additional local communications services taxes due on the sale after crediting the dealer with the amount of local communications services tax collected that was erroneously based on an assignment to an incorrect local taxing jurisdiction. In addition, a specific penalty of 10 percent of any tax collected but reported to an incorrect jurisdiction as a result of an incorrect address assignment, not to exceed $10,000 per return, will be imposed on any dealer that does not use a database described in paragraph (2)(a).

(c) When a dealer fails to respond to a contact by the Department to the managerial representative regarding the completeness or accuracy of the dealer's return, or when a dealer's records are determined to be inadequate for purposes of determining whether the dealer properly allocated tax to or between local governments, the Department may use the best information available to determine the proper allocation or reallocation. In such circumstances, the Department shall seek the agreement of the affected local governments.

(2)(a) A dealer will not be liable for any additional local communications services taxes, interest, or penalty due solely because of an error in assigning a service address to a local taxing jurisdiction if the dealer exercised due diligence in employing one or more of the following methodologies in assigning that service address:

1. The Address/Jurisdiction Database;

2. A database that has been certified by the Department, as provided in Rule 12A-19.072, F.A.C.;

3. An enhanced zip code method, as discussed in Rule 12A-19.073, F.A.C.; or

4. A database that, upon audit by the Department, is determined to have met the accuracy rate criterion required for certification under Rule 12A-19.072, F.A.C.

(b) A dealer must timely notify the Department of the method or methods to be used in assigning service addresses. Upon initial registration with the Department for communications services tax purposes, dealers should provide that information when completing form DR-1, Application to Collect and/or Report Tax in Florida (incorporated by reference in Rule 12A-1.097, F.A.C.) If a dealer changes the method or methods to be used, the dealer must notify the Department of the change in method or methods and of the effective date of the change on form DR-700020, Notification of Method Employed to Determine Taxing Jurisdiction (Communications Services Tax) (incorporated by reference in Rule 12A-19.100, F.A.C.).

(c) Due Diligence. In order to avoid liability for any additional local communications services tax, penalty, and interest resulting from errors in the assignment of customer service addresses to local taxing jurisdictions under paragraph (a), a dealer must exercise due diligence in employing one or more of the methodologies described. The dealer must exercise the care and attention that is expected from and ordinarily exercised by a reasonable and prudent person, under the circumstances, when ascertaining the correct amount of tax due on sales made by that person.

1. A dealer is exercising due diligence if that dealer expends reasonable resources to accurately and reliably implement one or more of the methods described in paragraph (a) and maintains adequate internal controls in the assignment of service addresses.

a. Internal controls in the assignment of service addresses are adequate if the dealer has in place and consistently follows procedures to obtain and incorporate accurate updates to its database at least once every six months and corrects errors in assignments of service addresses within 120 days from discovering or being notified of such errors by any person. A dealer's internal controls must ensure that procedures are in place to prevent the reoccurrence of errors that the dealer was previously notified of and has previously corrected. A dealer may choose to update its database more frequently than once every six months, as long as the dealer has in place and consistently follows procedures to obtain and incorporate accurate updates. The auxiliary file described in paragraph (1)(b) of Rule 12A-19.071, F.A.C., that is maintained by the Department and available to dealers and local government users may be used by the dealer to update the dealer's database more frequently than the minimum of at least once every six months. However, the availability of the auxiliary file on the Department's website does not constitute notice to a dealer of errors in the dealer's assignments of service addresses contained in the auxiliary file.

b. Internal controls in the assignment of service addresses are not adequate if the procedures in place to prevent the reoccurrence of previously corrected errors are not used or do not prevent the reoccurrence of incorrect assignments. Once notified by any person of an error, the dealer must ensure that the corrected information is preserved in its database. In the event that an error reoccurs, the dealer will be considered to have exercised due diligence as required for the protection described in paragraph (a) only if the reoccurrence occurs even though the dealer did in fact exercise the care and attention that is expected from, and ordinarily exercised by, a reasonable and prudent person under the circumstances, with regard to the reoccurrence of the error.

2. A communications services dealer must maintain records to establish that the dealer has exercised due diligence for the period of time during which the Department is authorized to assess taxes on sales of communications services by that dealer. A dealer should maintain all records that would establish that it exercised due diligence. Examples of such records include instructions or procedures provided to employees, contracts and correspondence with third-party vendors or service providers concerning the acquisition or maintenance of data, documentation establishing that the data was consistently updated at least once every six months, records concerning customer or local taxing jurisdiction objections to the assignment of service addresses and responses to those objections, records of changes made to the assignment of service addresses and when the changes were made, and any other records that pertain to the acquisition, maintenance, and revision of the data upon which service address assignments are based. For purposes of documenting that the dealer corrected errors within 120 days of notice or discovery, dealers should maintain documentation that establishes that the amount of time between the initial notification or discovery of the error and correction of the error did not exceed 120 days. Keeping records of each step within the process or procedures used to correct the error is not necessary; however, to establish due diligence, the dealer must be able to demonstrate that the overall time required to correct errors did not exceed 120 days. A dealer will not be entitled to the protection described in paragraph (a) during any period that the dealer does not have records establishing that the dealer exercised due diligence for that period.

3. If a communications services dealer uses a certified database provided by a third-party vendor, the communications services dealer must exercise due diligence in its own conduct in using the database. A dealer using a certified database provided by a third-party vendor is exercising due diligence if that dealer expends reasonable resources to accurately and reliably implement the third-party vendor's certified database and maintains adequate internal controls in the assignment of service addresses. As part of its due diligence, the dealer must comply with the vendor's instructions or directions in the dealer's use of the certified database. Further, the dealer has a duty to take reasonable steps to ascertain that the vendor maintains the database so as to ensure continuing qualification for certification. For example, if a vendor failed to provide an update to the database when scheduled to do so, a reasonable and prudent dealer relying on that vendor's database would contact the vendor and make inquiry. A dealer that uses a third-party vendor's certified database must ensure that when the dealer discovers or is notified of errors in assignments of service addresses, the errors are corrected within 120 days from discovering or being notified of such errors and that procedures are in place to ensure that the error is not repeated when a subsequent update is obtained from the vendor. Nothing in this subparagraph requires a dealer using a certified database to update its database more than two (2) times a year, so long as each update incorporates all changes received from the vendor since the prior update.

(d) If a communications services dealer uses multiple databases or methodologies, such dealer is protected from liability for any additional local communications services tax, interest, and penalty only as to service addresses assigned as specified in paragraph (a) of this subsection. Such a dealer is liable as provided in subsection (1) for any additional local communications services taxes, interest, and penalties in regard to erroneous jurisdictional assignments for any service address not assigned by a methodology described in paragraph (a). A dealer that uses multiple databases must maintain documents demonstrating that a service address has been assigned employing a methodology described in paragraph (a) in order to be held harmless for any additional local communications services taxes resulting from erroneous assignment of that service address.

(e)1. Employing one or more of the methods described in paragraph (a) protects a dealer from liability for any additional local communications services taxes and related interest and penalties that would otherwise have been due to a local taxing jurisdiction. A dealer's employment of one or more of the methods described in paragraph (a) does not deprive a purchaser of the right to a refund or credit of overpayment of local communications services taxes resulting from an erroneous assignment of that customer's service address to a local taxing jurisdiction with a higher rate than that in effect in the correct local taxing jurisdiction. If a purchaser complies with the procedural requirements of Section 202.23, F.S., and establishes that the dealer has incorrectly assigned the purchaser's service address and that an overpayment of local communications services tax has resulted, the dealer must refund or credit the amount of the overpayment to the purchaser. Upon making such refund or credit, the dealer would be entitled to an equal credit or refund from the Department upon proper reporting to the Department of the amount and jurisdictions involved. Dealers are not entitled to retain or take credits for taxes collected from any customers assigned to an incorrect local taxing jurisdiction in excess of the taxes due to the correct local taxing jurisdiction unless a refund or credit has been provided to the customer.

2. For purposes of this paragraph, a purchaser that requests a refund or credit from the provider in accordance with the provisions of Section 202.23, F.S., and that establishes that a dealer has assigned the purchaser's service address to a different local taxing jurisdiction from the one to which that address was assigned in the effective Address/Jurisdiction Database as of the date of the sale has established a presumption that the dealer's assignment was erroneous, because the effective Address/Jurisdiction Database is conclusive for purposes of the communications services taxes. If a dealer believes that the assignment of the purchaser's

address in the Department's database is incorrect, the dealer should refer that refund claim to the Department for a determination in accordance with the procedures in Section 202.23, F.S. A dealer who assigned a purchaser's service address in accordance with the effective Address/Jurisdiction Database at the time of the sale on which the purchaser asserts that tax was overpaid should refer the purchaser to the Department in order for the purchaser to object to the Address/Jurisdiction Database as a substantially affected person. The dealer is not required to make a refund or credit to the purchaser unless the Department has subsequently revised the assignment of that address to correct an error, such revision was retroactive to the date of the sale involved pursuant to paragraph (3)(g) of Rule 12A-19.071, F.A.C., and the purchaser has requested a refund or credit in accordance with the provisions of Section 202.23, F.S.

(3) Collection Allowance.

(a) Any communications services dealer that employs one or more of the methodologies described in subparagraph (2)(a)1., (2)(a)2., or (2)(a)3. for assigning service addresses to local taxing jurisdictions is entitled to a collection allowance of .75 percent on taxes collected on service addresses assigned using the described methodologies. Any communications services dealer that employs any methodology that is not described in subparagraph (2)(a)1., (2)(a)2., or (2)(a)3. for assigning service addresses to local taxing jurisdictions is entitled to a collection allowance of .25 percent on taxes collected on service addresses assigned using such other methodology. A communications services dealer who is not liable for an assessment of additional local communications services taxes, interest, and penalties by reason of employing a database that is found upon audit to meet the accuracy criteria for certification, as described in subparagraph (2)(a)4., is entitled to a collection allowance of .25 percent until such time as an application for certification of the database is made and approved.

(b) A communications services dealer must maintain records to demonstrate that a .75 percent collection allowance was claimed only in regard to taxes that were collected for service addresses that were assigned employing one or more of the methodologies that qualify for that allowance. If a communications services dealer's records do not clearly establish that the assignment of the service addresses was made employing one or more of the methodologies described in subparagraph (2)(a)1., (2)(a)2., or (2)(a)3., the dealer shall be entitled to only a .25 percent collection allowance on sales made to such service addresses.

(c) A communications services dealer must also timely file its return, correctly remit all tax reported, and meet all the other requirements of Section 202.28, F.S., in order to be entitled to any collection allowance. This rule deals only with determining the amount of collection allowance available to a dealer who otherwise qualifies to receive the allowance. It does not create any separate entitlement to an allowance other than that set forth in Section 202.28, F.S.

Specific Authority 202.26(3)(b),(f),(g), 202.28(1) FS. Law Implemented 202.22(1),(4),(5),(6),(8), 202.23, 202.28(1),(2), 202.34(1)(a), 202.35(3) FS. History–New _____.

12A-19.071 Department of Revenue Electronic Database.

(1)(a) The Department maintains an electronic database that assigns service addresses to local taxing jurisdictions in a format that satisfies the requirements of Section 202.22(2)(a), F.S. The electronic database, referred to as the communications services tax Address/Jurisdiction Database, is maintained on the Department's website at the address inside the parentheses (www.myflorida.com/dor). An updated Address/Jurisdiction Database is posted to the Department's website 90 days prior to adoption of the Address/Jurisdiction Database. The updated Address/Jurisdiction Database is adopted and becomes effective every January 1 or July 1. References to the effective Address/Jurisdiction Database refer to the official database that is available on the website and conclusive for purposes of communications services tax, which was adopted the previous January 1 or July 1. The effective Address/Jurisdiction Database does not include the information contained in the auxiliary file described in paragraph (b).

(b) When a change to the Address/Jurisdiction Database has been approved, it is stored in an auxiliary file pending its inclusion in the next scheduled update of the database to become effective the next January 1 or July 1. The auxiliary file is maintained by the Department and contains the most recent service address local taxing jurisdictional assignment information. Dealers may use the auxiliary file to update their service address assignments between the January 1 and July 1 effective date of the Address/Jurisdiction Database even though such use of the auxiliary file is not required to satisfy due diligence requirements.

(c) Local taxing jurisdictions and communications services providers are provided with access codes to permit them to register as users of the database. Registered local taxing jurisdictions and communications services dealers have the capability of downloading databases of addresses assigned to each local taxing jurisdiction. A file of addresses in the format adopted by the Federation of Tax Administrators and the Multistate Tax Commission in accordance with the federal Mobile Telecommunications Sourcing Act is available. Local taxing jurisdictions also have access to an on-line form for requesting changes in service address assignments.

(d) The Department will allow other persons, such as third-party vendors of databases or billing services, to download the database, when permitting such access is practicable and the Department determines that such access will further efficient administration of the taxes for which the Department is responsible.

(e) The Department's website also has a single address lookup feature that permits any person to enter an address and ascertain to which local jurisdiction it is assigned. Use of the single address lookup feature does not require an access code or registration. The individual address lookup feature searches the auxiliary file as well as the effective database and may therefore reflect information that has not yet been incorporated into the effective database available for downloading and use by local taxing jurisdictions and communications services dealers. In such cases, the individual address lookup page carries a statement notifying the viewer that it reflects a pending change to the database.

(f) The availability and effective date of the updated Address/Jurisdiction Database are announced in the Florida Administrative Weekly. Updates incorporate corrections of any errors discovered since the last preceding update, as well as changes in addresses or jurisdictional boundaries based on information provided by local taxing jurisdictions. Each update of the Address/Jurisdiction Database is posted on the Department's website at least 90 days prior to adoption and is also available to dealers of communications services, vendors of databases, and other persons authorized to download the database in magnetic or electronic media for a fee not to exceed the cost of furnishing the updated version in such media. Requests for electronic or magnetic media copies should be addressed to: Florida Department of Revenue, Communications Services Tax, Local Government Unit, Post Office Box 5885, Tallahassee, Florida 32314-5885.

(g) To fulfill its statutory responsibility to maintain the database, the Department will when practicable initiate procedures to correct apparent errors, such as an address being assigned to two jurisdictions or not being assigned to any jurisdiction. The Department will in such cases initiate an objection to the database in accordance with the provisions of subsection (3) and will process the objection in the same manner in which other objections are processed.

(2)(a) Local taxing jurisdictions have a continuing obligation to provide the Department with information to update the Address/Jurisdiction Database, such as changes in service addresses or address ranges, annexations, incorporations, reorganizations, and any other changes to jurisdictional boundaries. Local taxing jurisdictions must inform the Department of the identity of the jurisdictions' officers or employees who are authorized to act as contact persons with the Department on database matters. Local taxing jurisdictions are limited to two (2) authorized contact persons; however, local taxing jurisdictions may provide updated contact person information as frequently as necessary to ensure that the appropriate contact person can be reached by the Department to administer database matters. The contact list of authorized local government contact persons for all local taxing jurisdictions is located on the Department's website and is available to those persons who have an access code.

(b) Local taxing jurisdictions must submit information requesting changes to the Address/Jurisdiction Database electronically following the on-line Guide for Address Change Requests (hereby incorporated by reference). Local taxing jurisdictions that do not have access to computers with Internet access should contact the Department to request authorization to submit changes through alternative electronic media. The information must also be submitted on form DR-700022, Local Communications Services Tax Notification of Jurisdiction Change (incorporated by reference in Rule 12A-19.100, F.A.C.).

(c) In the event that a local taxing jurisdiction improperly formats its batch submission, the Department will notify the requesting jurisdiction of its error and designate the file as a pending submission until such time as a corrected submission is received. If the corrected submission is not received in time to be included in the next update, the pending submission will be denied and the local taxing jurisdiction should provide a new submission for those addresses or address ranges. Local taxing jurisdictions should not submit jurisdiction changes between the last date of submission for the next update and the posting of that update of the Address/Jurisdiction Database on the Department's website. Submissions initiated during this time frame will be denied, and a new submission will be necessary.

(d) The local taxing jurisdiction must specify the effective date of any information to be incorporated in the Address/Jurisdiction Database. The effective date must be the next January 1 or July 1 after the date of submission of the information to the Department. Changes must be submitted no later than the date that is 120 days prior to the January 1 or July 1 on which changes are to be effective.

(e)1. Any requested changes or additions to the Address/Jurisdiction Database must be supported by competent evidence. Competent evidence to support a change to the Address/Jurisdiction Database is documentation establishing that the service addresses affected by the requested change or addition are located in the local taxing jurisdiction indicated on the request. Examples of competent evidence include annexation ordinances, articles of incorporation of a new municipality, the plat filed for a newly approved subdivision, or the enhanced 911 Master Street Address Guide (MSAG) database information relating to local law enforcement responders issued by the local jurisdiction coordinator's office. Competent evidence must clearly designate the service addresses or address ranges that are affected.

2. If a requested change is to move an address from one local taxing jurisdiction to another, competent evidence includes the consent of the local taxing jurisdiction that did not request the change. To facilitate processing of the change, the local taxing jurisdiction requesting the change should attempt to obtain written consent to the change from an authorized contact person of the non-requesting jurisdiction. Form

DR-700022 contains an authorization statement that will serve as the written consent of the non-requesting local taxing jurisdiction when signed by that jurisdiction's authorized contact person. The Department will consider the receipt of a form DR-700022 containing the signatures of the authorized contact persons of both the initiating and affected jurisdictions to be sufficient competent evidence. In such instances, the Department will make the change based upon the representations on the form. A local taxing jurisdiction that objects to the change should use form DR-700022 to change the address information and, unless the affected local taxing jurisdiction signs the form, the Department will treat the request as one that must be resolved by the local taxing jurisdictions involved as provided in this paragraph. Identification of the case number associated with the address changes is insufficient by itself to demonstrate competent evidence establishing that the service addresses are located in the local taxing jurisdiction indicated on the request.

3. If the requesting jurisdiction has not obtained the written consent of the non-requesting jurisdiction, the Department will contact the non-requesting jurisdiction before making the change. Based upon the response of the non-requesting jurisdiction, the Department will take the following action in regard to the requested change:

a. If the non-requesting jurisdiction consents in writing, the Department will accept and process the change.

b. If the non-requesting jurisdiction objects in writing, the Department will treat the requested change as one that must be resolved by the local taxing jurisdictions involved as provided in subsection (3).

c. If the non-requesting jurisdiction fails to either consent or object in writing within 20 days after the date on which the Department notified that jurisdiction of the requested change, the Department will accept and process the change. This will not preclude the non-requesting jurisdiction from subsequently submitting requests to change the new address assignments after they have been processed.

4. If a requested change affects only the requesting local taxing jurisdiction and does not affect another local taxing jurisdiction, the Department will consider receipt of an affidavit signed by the authorized contact person for that local taxing jurisdiction that identifies the addresses or address ranges and states that the change affects only the requesting local taxing jurisdiction to be sufficient competent evidence. The use of an affidavit is not required but, at the option of the requesting local taxing jurisdiction, may be used in lieu of providing other documentation such as subdivision plats. In such instances, the Department will make the change based upon the representations on the form and the affidavit. A local taxing jurisdiction that objects to the change should use form DR-700022 to change the address information and, unless the affected local taxing jurisdiction signs the form, the Department will treat the request as one that must be resolved by the local taxing jurisdictions involved as provided in subsection (3).

(f) Examples.

1. A local taxing jurisdiction approves the plat and grants the permits necessary for development of a new subdivision on February 1, 2005. The plat indicates street names but no address numbers have yet been assigned. In order for the addresses to be added to the electronic database effective the following July 1, the local taxing jurisdiction must file form DR-700022 with a copy of the approved subdivision plat or an affidavit indicating that the change affects only the requesting local taxing jurisdiction and submit on-line address change information by March 3, 2005. If that deadline is not met, the earliest date on which the new service addresses can be added to the database is January 1, 2006. In order to meet the deadline and be certain that the actual address numbers are included, the contact person for the local taxing jurisdiction may request the addition of a range of numbers that is certain to include the actual numbers. Because the development of the subdivision affects only the requesting jurisdiction, no consent from any other jurisdiction is required.

2. A municipality annexes an area with 1500 service addresses that was formerly in an unincorporated area of the county. The annexation will be effective July 1, 2004. The municipality's database contact person timely enters address change requests for 1525 addresses on-line and files a form DR-700022 on March 2, 2004. Included with the form are a copy of the annexation ordinance and a map with the annexed area outlined with street address ranges included in the annexed area noted. The county database contact person has not signed the form DR-700022 or otherwise given written consent to the changes. On March 5, 2004, the Department notifies the county of the requested changes and provides copies of the municipality's form DR-700022, annexation ordinance, and map. The county does not respond with written consent or a written objection. On March 26, 2004, the Department processes the changes, and they are included in an update posted on April 2, 2004, to take effect July 1, 2004. The county's database contact person notifies the Department on July 15, 2004, that the county believes the database now incorrectly assigns 25 service addresses to the municipality. The county should submit form DR-700022 to move the addresses from the municipality to the county. The Department will handle this as a change to the database.

3. A municipality annexes an area with 1500 service addresses that was formerly in an unincorporated area of the county. The annexation will be effective July 1, 2004. The municipality's contact person timely enters address change requests for the 1500 addresses on-line and writes a letter to the county's contact person requesting that consent be indicated by signing a form DR-700022 that has been prepared by the municipality and enclosed with the letter. Also enclosed with

the letter is a copy of the annexation ordinance and a street map on which the annexed area is outlined. The county contact person signs the form DR-700022. The municipality submits the form to the Department on February 15, 2004. The Department will approve the changes and include them in the July 1, 2004 update to the Address/Jurisdiction Database.

(3)(a) Any substantially affected party may object to information contained in the Address/Jurisdiction Database by submitting form DR-700025, Objection to Communications Services Tax Electronic Database Service Address Assignment (incorporated by reference in Rule 12A-19.100, F.A.C.), along with competent evidence to support the party's objection. Only objections to the effective Address/Jurisdiction Database can be considered; those objections that are not objections to the effective Address/Jurisdiction Database will be denied. Before submitting an objection, a person should check the effective Address/Jurisdiction Database and the auxiliary file to determine whether the contemplated objection is necessary. Examples of substantially affected parties include purchasers of communications services who pay local communications services taxes, dealers who are required to collect local communications services taxes, the Department of Revenue, and local taxing jurisdictions. However, local taxing jurisdictions should use form DR-700022 to create addresses in the Address/Jurisdiction Database or to request address assignment changes. Regardless of which form is used to request changes to the Address/Jurisdiction Database, the consent of an affected jurisdiction will be required.

(b) Multiple address submissions affecting multiple jurisdictions should be segregated, based on the specific combinations of the affected jurisdictions, in a manner that segregates the changes from City A to City B from the changes from City B to City A.

(c) When a dealer that is required to collect local communications services tax objects to information contained in the Address/Jurisdiction Database, the dealer must file form DR-700025. In the event the dealer objects to the assignment of multiple addresses or address ranges, the dealer should electronically submit the addresses in the format used to apply for certification of databases by following the on-line Instructions for Preparing and Submitting Customer Address Files for Certification Testing, as provided in paragraph (2)(a) of Rule 12A-19.072, F.A.C. In the event that the dealer is unable to submit its objection electronically, the dealer should contact the Department to request authorization to submit changes through alternative electronic media.

(d) Examples of competent evidence that supports an inquiry into a substantially affected party's objection include a voter registration card indicating the voter residing at a service address is entitled to vote in municipal elections or only in county elections, the enhanced 911 MSAG database, or a map that includes the boundaries of a local taxing jurisdiction and clearly places a service address inside or outside those boundaries. For example, if a map shows that a street is entirely within the boundaries of a municipality, that map is competent evidence that a service address on that street should be assigned to that municipality in the database. The Department will notify the substantially affected party of any deficiencies in the objection or competent evidence.

(e) When the Department believes that addresses or address ranges have been assigned to an incorrect local taxing jurisdiction, the Department will initiate the change by using form DR-700025. The Department will use any information at its disposal, including enhanced 911 MSAG database address information and information supplied by any dealer, as a basis for initiating an objection; however, in no event, will the Department change any address assignment without providing notice to the affected jurisdictions in the manner provided in paragraph (3)(f). If the change is approved, it would be included in the auxiliary file with other approved changes for inclusion in the next update of the database.

(f) Upon receipt of an objection on a completed form DR-700025, including competent evidence to support the objection, the Department will forward copies of the form, along with the associated documentation, to the database contact person in each affected taxing jurisdiction. The Department will, when practicable, provide the information electronically for review by the local taxing jurisdictions. The local taxing jurisdictions should review the specific address(es) at issue as well as the address range(s) that will be impacted by the change to ensure that each local taxing jurisdiction retains all of the addresses that it believes are within its jurisdictional boundaries. The Department will instruct each local taxing jurisdiction to indicate in writing its determination in regard to the objection. If the affected local taxing jurisdictions both indicate agreement with the objection, the Department will revise the electronic database accordingly. If a local taxing jurisdiction fails to respond within a reasonable time, which shall be no less than 30 days, such jurisdiction shall be deemed to have indicated agreement with the objection. If either local taxing jurisdiction notifies the Department in writing that it does not agree with the objection, the Department will immediately assign the address with a special designation that indicates that the jurisdictional assignment of the address is in dispute. The service address will be reassigned to a local taxing jurisdiction when one of the following events occurs:

1. The Department receives written notification from the local taxing jurisdiction that did not agree with the change requested in the objection that such local taxing jurisdiction has subsequently determined that the change should be made;

2. The Department receives written notification from the party that filed the form DR-700025 that the objection was erroneous and the assignment in the database was correct; or

3. The Department is provided with a copy of a final order, judgment, or other binding written determination resolving the jurisdictional assignment of the contested address.

(g) No communications services provider who relies on the assignment of a service address in the effective Address/ Jurisdiction Database will be held liable for any additional local communications services tax, interest, or penalty in regard to that service address if the assignment is later determined to be erroneous under this subsection. For purposes of making refunds to purchasers that have requested a refund pursuant to the provisions of Section 202.23, F.S., a correction to the effective Address/Jurisdiction Database will be retroactive to the July 1 or January 1 on which the erroneous assignment took effect only when form DR-700025 objecting to the assignment is filed with the Department no later than the August 31 following an assignment that became effective on July 1 or the February 28 (February 29 in a leap year) following an assignment that became effective on January 1 and the objection is subsequently approved.

Specific Authority 202.26(3)(b),(g) FS. Law Implemented 202.22(2), 202.23 FS. History–New _____.

12A-19.072 Certification of Service Address Databases.

(1) A communications services dealer that develops and maintains its own database for assigning service addresses to local taxing jurisdictions or a third-party vendor that provides a database for sale to communications services dealers or uses such a database in providing billing or other services to communications services dealers may apply to the Department for certification of the database. A database will be certified if it assigns street addresses, address ranges, post office boxes, and post office box ranges to the proper local taxing jurisdictions with an overall accuracy rate of 95 percent with a 95 percent level of confidence, based on a statistically reliable sample. Accuracy must be measured based on the entire geographic area within the state of Florida covered by the database for which certification is sought.

(2)(a) Application for certification must be made to the Department on form DR-700012, Application for Certification of Communications Services Database (incorporated by reference in Rule 12A-19.100, F.A.C.), and in accordance with the on-line Instructions for Preparing and Submitting Customer Address Files for Certification Testing (available at the Department's website, www.myflorida.com/dor, and hereby incorporated by reference). All applicable portions of the application must be completed. Communications services dealers and vendors that sell databases of addresses to dealers must submit the address databases for which certification is sought with their applications.

(b) The Department will notify the applicant of any errors or omissions in the application and of all additional information or documentation required within 90 days of receipt of the application. The Department will review the application and contact the individual designated in the application concerning any additional information required and the format in which such information must be submitted. The applicant shall provide access to all records, facilities, and processes reasonably required to review, inspect, or test the database within 10 working days of the Department's request for such access.

(c)1. The Department will test the applicant's database by comparing the assignments of service addresses to the assignments of service addresses in the Address/Jurisdiction Database, which is the Department's on-line database described in Rule 12A-19.071, F.A.C. The Department will notify the applicant of all service addresses that do not match the Department's database, regardless of whether the applicant's database meets the accuracy criterion for certification.

2. In the event that an applicant vendor has a software program that assigns addresses to jurisdictions rather than a database of addresses, the vendor should include a copy of the "user manual" or equivalent directions that will be provided to purchasers of the software with its application for certification. Procedures for testing the software and its assignment of addresses or address ranges to local taxing jurisdictions will be determined on a case-by-case basis. The procedures must be sufficient to ensure that the software meets an overall accuracy rate of 95 percent with a 95 percent level of confidence.

(d) Within 180 days of receipt of a completed application, the Department will issue a written determination.

1. If the notice grants certification, it will specify the expiration date, which will be three years from the date of the notice.

2. If the notice denies certification, it must specify the grounds, inform the applicant of any available remedy, and set forth procedures for protesting the denial. If the applicant cures the defects that formed the basis for denial and upon retesting the database meets the requirements for certification, the Department will issue a notice certifying the database. If the defects forming the basis of the denial are based on a sample, correction of the errors identified in the sample does not constitute correction of the database. The Department is authorized to grant certification of the database even in cases where the applicant has filed a petition and a proceeding is pending under Chapter 120, F.S.

(3) An application for recertification of a database must be submitted on form DR-700012 when the certification period expires. If an application for recertification is received prior to the stated expiration date of the certification period, the prior certification will not expire until the Department takes final action on the application for recertification. In such cases, if the Department denies recertification, the prior certification will remain in effect until the time for administrative or judicial review of the Department's denial of recertification has expired or, if later, the date fixed by order of the reviewing court.

(4) Certification or recertification of a database is effective upon the date of the Department's notice approving the application. The notice approving the application is in the form of a letter stating that the database is certified and that an

application for renewal should be applied for by a specified date. Unless a timely application for recertification has been filed as provided under subsection (3), a certification or recertification is effective through the date stated on the notice.

(5) In determining whether a database qualifies for certification, the Department will consider whether the applicant will implement procedures designed to maintain the accuracy level required for certification throughout the certification period. If the Department obtains information indicating that a certified database is not being properly maintained and updated to ensure on-going accuracy at the required levels, the Department will notify the applicant and review the operation and maintenance of that database. If the Department determines that a database no longer qualifies for certification and remedial steps are not promptly taken, the Department will revoke the certification. The Department will first provide notice to the applicant of its intent to revoke the certification, as provided in Section 120.60, F.S., and afford the applicant a point of entry under Chapter 120, F.S., to contest the notice of intent.

(6) Certification is contingent upon there being no material changes to the database or procedures for its updating and maintenance. If there are such changes, the applicant should inform the Department and request a determination whether a new form DR-700012 should be submitted. If practicable, the Department will test the effect of the changes rather than require a new certification procedure for the entire database. A material change is any change that could reasonably be expected to affect whether the database would still meet the 95 percent accuracy level required for certification. Examples of changes that could be material would be a substantial expansion of the service area covered by a database, the merger of the certified database with a non-certified database, a change in the sources from which information for the database is obtained, or alteration of the methods by which service addresses are assigned, updated, or corrected. Changes to the assignment of service addresses or address ranges that are made in the course of consistently followed procedures to obtain and incorporate accurate updates and to correct errors in assignments of service addresses as required to satisfy the due diligence standards set forth in paragraph (2)(c) of Rule 12A-19.070, F.A.C., are not material changes that require Department review of a database.

Specific Authority 202.26(3)(g) FS. Law Implemented 202.22(3) FS. History–New _____.

12A-19.073 Use of Enhanced Zip Code Method to Assign Service Addresses to Local Taxing Jurisdictions.

(1) An enhanced zip code method is a method of assigning service addresses to local taxing jurisdictions based on United States postal zip codes of at least nine digits.

(2) A communications services dealer may avoid liability as provided in Rule 12A-19.070, F.A.C., for any additional local communications services tax, penalty, and interest resulting from errors in assigning service addresses to an incorrect local taxing jurisdiction when the correct local taxing jurisdiction has a higher local tax rate by employing an enhanced zip code method only if the requirements of this rule are satisfied.

(3)(a) The dealer or the vendor providing the database is not permitted to rely solely on the location of the post office to which an enhanced zip code is assigned by the United States Postal Service if the area covered by the enhanced zip code is not entirely located within the same local taxing jurisdiction as the post office. In some cases, the area included in an enhanced zip code overlaps local jurisdictional boundaries or is outside the local taxing jurisdiction where the post office to which a zip code is assigned is located. In addition, a dealer may provide services to customer service addresses for which an enhanced zip code is not available, because the service address is in a rural area or is without postal delivery. The dealer or the vendor must use a reasonable methodology that accurately assigns service addresses to the correct local taxing jurisdictions in such circumstances. The dealer or vendor will be considered to have used a reasonable methodology if it relies on information obtained from one or more of the following sources:

1. The Address/Jurisdiction Database, described in Rule 12A-19.071, F.A.C.;

2. A database that has been certified by the Department as provided in Rule 12A-19.072, F.A.C.;

3. Representatives of relevant local taxing jurisdictions whose responsibilities entail knowledge of the location of addresses as within or without their jurisdictions;

4. The United States Census Bureau; or

5. The United States Postal Service.

(b) The dealer must maintain records that establish the methodology used to assign service addresses as provided in this subsection.

(4) The dealer employing an enhanced zip code method to assign service addresses to local jurisdictions must satisfy the notification and due diligence requirements set forth in paragraphs (2)(b) and (c) of Rule 12A-19.070, F.A.C. For purposes of due diligence requirements, a communications services dealer or an enhanced zip code database vendor is deemed to have expended reasonable resources to accurately and reliably implement an enhanced zip code method if the requirements of subsection (3) have been met. The due diligence requirement includes the requirement to correct errors in the assignments of service addresses within 120 days of discovering or being notified by any person of such errors. The database vendor or dealer must also maintain adequate internal controls to assure the on-going accuracy of an enhanced zip code database as described in subparagraph (2)(c)1. of Rule 12A-19.070, F.A.C.

(5) Mobile communications services providers using an enhanced zip code method are subject to the safe harbor provisions of Title 4 United States Code (U.S.C.) section 120, including the termination of the safe harbor provided by that section . Such providers will be held harmless from liability for additional local communications services tax, penalty, and interest resulting from erroneous assignments of customer service addresses to local taxing jurisdictions as provided in the federal Mobile Telecommunications Sourcing Act. On May 23, 2003, the Department provided notice, as required by Title 4 U.S.C. s. 119(b), that the Department of Revenue's Address/ Jurisdiction Database complies with the formatting requirements of Title 4 U.S.C. s. 19(a)(2) of the Mobile Telecommunications Sourcing Act.

(6) In order to be entitled to the .75 percent collection allowance, a communications services dealer that employs an enhanced zip code method to assign service addresses must satisfy the requirements of subsection (3) of this rule and the requirements of subsection (3) of Rule 12A-19.070, F.A.C.

Specific Authority 202.26(3)(b),(f),(g), 202.28(1) FS. Law Implemented 202.22(1),(4),(6),(7), 202.28(1)(b)2. FS. History–New _____.

12A-19.100 Public Use Forms.

(1)(a) The Department employs the following public-use forms and instructions in the administration of Chapter 202, F.S., Communications Services Tax. These forms are hereby incorporated by reference in this rule.

(b) No change.

Form Number	Title	Effective Date
(2) through (6) No change.		
(7) DR-700022	Local Communications Services Tax Notification of Jurisdiction Change (R. ___)	____
(8)~~(7)~~ DR-700025	Objection to Communications Services Tax Electronic Database Service Address Assignment (R. ___ ~~N. 04/02~~)	____ ~~04/03~~
(9)~~(8)~~ No change.		

Specific Authority 202.151, 202.16(2), 202.26(3)(c),(d) FS. Law Implemented 202.11(4),(11),(12), 202.13(2), 202.151, 202.16(2),(4), 202.17(6), 202.34(3),(4)(c) FS. History–New 4-17-03, Amended 7-31-03, 10-1-03, _____.

DEPARTMENT OF TRANSPORTATION

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Prompt Settlement or Legal Defense of Claims and Disqualification for Failure to Settle Claims 14-24

RULE TITLE: RULE NO.:
Provisions for Prompt Settlement or Legal Defense of Claims and Disqualification for Failure to Settle Claims 14-24.001

PURPOSE AND EFFECT: This amendment is to update the revision date for Form 700-050-21, Contractor's Affidavit and Surety Consent (Form 21-A), which is incorporated by reference in Rule 14-79.006, F.A.C., and cross referenced in this rule. Rule 14-79.006, F.A.C., also is being amended by separate notice to incorporate the revised form by reference.

SUBJECT AREA TO BE ADDRESSED: This is an editorial amendment to update the revision date for Form 700-050-21, Contractor's Affidavit and Surety Consent (Form 21-A), which is cross referenced within this rule and incorporated by reference under Rule 14-79.006, F.A.C.

SPECIFIC AUTHORITY: 334.044(2), 337.18(1) FS.

LAW IMPLEMENTED: 334.044(28), 337.141, 337.18(1) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: James C. Myers, Clerk of Agency Proceedings, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

14-24.001 Provisions for Prompt Settlement or Legal Defense of Claims and Disqualification for Failure to Settle Claims.

Any surety which does not settle or provide defense for claims or actions in connection with liabilities arising under a contract promptly and satisfactorily shall be disqualified from issuing bonds for future contracts by the Department in accordance with this rule.

(1) Failure on the part of the surety to furnish an affidavit to the effect that these requirements have been met on Contractor's Affidavit and Surety Consent (Form 21-A), Florida Department of Transportation Form 700-050-21, Rev. 08/04 ~~10/99~~, which is incorporated by reference under Rule 14-79.006, F.A.C., to the Department within 90 days of the Department's offer of final payment shall constitute grounds for disqualification. Preliminary notice of disqualification will be furnished to the surety 30 days prior to disqualification.

Qualification will be reinstated upon receipt by the Department of the properly executed Form Contractor's Affidavit and Surety Consent (Form 21-A).

(2) No change.

Specific Authority 334.044(2), 337.18(1) FS. Law Implemented 334.044(28), 337.141, 337.18(1) FS. History–Formerly 14-10.01, F.A.C., Amended 3-21-64, 9-24-75, Formerly 14-24.01, Amended 10-30-96, 1-17-99, 3-28-00, _____.

DEPARTMENT OF TRANSPORTATION

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Construction Management Development Program and Bond Guarantee Program 14-79
RULE TITLE: RULE NO.:
Construction Management Development Program 14-79.006

PURPOSE AND EFFECT: This amendment is to incorporate by reference a revised version of Form 700-050-21, Contractor's Affidavit and Surety Consent (Form 21-A). A cross reference to this form in Rule 14-24.001, F.A.C., is being amended by separate notice.

SUBJECT AREA TO BE ADDRESSED: This amendment is to incorporate by reference a revised version of Form 700-050-21, Contractor's Affidavit and Surety Consent (Form 21-A).

SPECIFIC AUTHORITY: 334.044(2), 337.18(1) FS.

LAW IMPLEMENTED: 334.044(28), 337.141, 337.18(1) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: James C. Myers, Clerk of Agency Proceedings, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

14-79.006 Construction Management Development Program.

This rule implements a voluntary comprehensive Construction Management Development Program (CMDP) for Disadvantaged Business Enterprises and other small businesses and establishes a program for providing financial assistance to Disadvantaged Business Enterprises through a Bond Guarantee Program (BGP).

(1) through (9) No change.

(10) Bond Guarantee Program.

(a) Department Requirements/Limitations.

1. No change.

2. As a condition of receiving a bond guarantee on a Department contract, the Department shall retain five percent of the total contract amount designated for the Disadvantaged Business Enterprise. This bond guarantee retainage shall be released upon final acceptance of the project and receipt of a Contractor's Affidavit and Surety Consent (Form 21-A), Florida Department of Transportation Form 700-050-21, Rev. 08/04 ~~10/99~~, showing all subcontractors and suppliers have been paid.

(b) through (13) No change.

(14) Forms. The following listed forms are hereby incorporated by reference and made a part of the rules of the Department:

Form Number	Form Title	Revision Date
275-030-070-a	Application for Construction Management Development Program (CMDP) and Bond Guarantee Program (BGP)	03/89
275-030-071-a	Application for Small Business Certification (SBC)	03/89
275-030-073-a	Technical Assistance Request	03/89
275-030-074-a	Justification for Bond Guarantee	03/89
700-050-21	Contractor's Affidavit and Surety Consent (Form 21-A)	08/04 ~~10/99~~

Copies of these forms are to be obtained from the Florida Department of Transportation, Equal Opportunity Office, 605 Suwannee Street, Mail Station 65, Tallahassee, Florida 32399-0450.

Specific Authority 334.044(2), 339.0805(1)(b) FS. Law Implemented 334.044(28), 337.141, 339.0805(2) FS. History–New 5-24-89, Amended 8-5-96, 10-30-96, 5-6-97,1-17-99, 3-17-00, _____.

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."

DEPARTMENT OF CITRUS

RULE CHAPTER TITLE: RULE CHAPTER NO.:
International Promotions 20-116
RULE TITLES: RULE NOS.:
Purpose 20-116.001
Payments 20-116.002

PURPOSE AND EFFECT: Establishing consistency between state and federal rules governing reimbursement of expenditures for FAS-funded international programs and events.

SUBJECT AREA TO BE ADDRESSED: Establishing by rule the guidelines for reimbursement of FAS-funded international programs and events.

SPECIFIC AUTHORITY: 601.15(10)(a),(h), 601.15(8)(b),(c) FS.

LAW IMPLEMENTED: 601.15(10)(h), 601.15(8)(b),(c) FS.

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

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

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

PUBLIC SERVICE COMMISSION

UNDOCKETED

RULE TITLES:	RULE NOS.:
Definitions	25-4.003
Private Line/Special Access Cost Manual	25-4.044
Hearing/Speech Impaired Persons	25-4.079
Directory Assistance	25-4.115

PURPOSE AND EFFECT: To conform the rule to the legislative changes made in 2003 to Chapter 364, Florida Statutes.

SUBJECT AREA TO BE ADDRESSED: Elimination of the need to certificate interexchange companies (IXCs).

SPECIFIC AUTHORITY: 350.127(2) FS.

LAW IMPLEMENTED: 364.01, 364.01(4), 364.02, 364.025, 364.03, 364.04, 364.07, 364.08, 364.14, 364.17, 364.32, 364.335, 364.337, 364.3375, 364.3376, 364.602, 364.603, 364.604 FS.

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

TIME AND DATE: 9:30 a.m., September 2, 2004

PLACE: Betty Easley Conference Center, Room 152, 4075 Esplanade Way, Tallahassee, FL

THE WORKSHOP REQUEST MUST BE SUBMITTED IN WRITING TO: Marlene Stern, Office of the General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850.

Any person requiring some accommodation at this workshop because of a physical impairment should call the Division of the Commission Clerk and Administrative Services, (850)413-6770, at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Nancy Pruitt, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, (850)413-6127

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

PUBLIC SERVICE COMMISSION

UNDOCKETED

RULE TITLES:	RULE NOS.:
Scope and Waiver	25-24.455
Terms and Definitions; Rule Incorporated	25-24.465
Registration Required	25-24.470
Provision of Regulated Telecommunications Service to Uncertificated Resellers Prohibited	25-24.4701
Application for Certificate	25-24.471
Improper Use of a Certificate	25-24.472
Application for Approval of Assignment or Transfer of Certificate	25-24.473
Cancellation of Registration	25-24.474
Company Operations and Customer Relations	25-24.475
Records and Reports	25-24.480
Tariffs	25-24.485
Customer Relations; Rules Incorporated	25-24.490
Notice to Customers Prior to Increase in Rates or Charges	25-24.491
Application and Scope	25-24.600
Terms and Definitions; Rules Incorporated	25-24.610
Service Requirements for Call Aggregators	25-24.640
Rules Incorporated	25-24.835
Service Standards	25-24.840
Scope	25-24.900
Terms and Definitions	25-24.905
Registration or Certificate of Public Convenience and Necessity Required	25-24.910
Tariffs or Price Lists	25-24.915
Standards for Prepaid Calling Services and Consumer Disclosure	25-24.920
Adequacy of Service	25-24.930
Penalties	25-24.940

PURPOSE AND EFFECT: To conform the rule to the legislative changes made in 2003 to Chapter 364, Florida Statutes.

SUBJECT AREA TO BE ADDRESSED: Elimination of the need to certificate interexchange companies (IXCs).

SPECIFIC AUTHORITY: 350.127(2), 364.337, 364.3376, 427.704 FS.

LAW IMPLEMENTED: 350.113, 350.127(1), 364.01, 364.016, 364.02, 364.03, 364.035, 364.04, 364.051, 364.057, 364.07, 364.08, 364.09, 364.10, 364.14, 364.15, 364.183, 364.19, 364.27, 364.285, 364.32, 364.33, 364.335, 364.336, 364.337, 364.3376, 364.345, 364.602, 364.603, 364.604, 427.704 FS.

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

TIME AND DATE: 9:30 a.m., September 2, 2004

PLACE: Betty Easley Conference Center, Room 152, 4075 Esplanade Way, Tallahassee, FL

THE WORKSHOP REQUEST MUST BE SUBMITTED IN WRITING TO: Marlene Stern, Office of the General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850.

Any person requiring some accommodation at this workshop because of a physical impairment should call the Division of the Commission Clerk and Administrative Services, (850)413-6770, at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Nancy Pruitt, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, (850)413-6127

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

PUBLIC SERVICE COMMISSION

UNDOCKETED

RULE TITLE: RULE NO.:

Pay Telephone Service 25-24.515

PURPOSE AND EFFECT: To change the reference from the ANSI Standards for Accessible Design to the ADA Standards for Accessible Design in 28 CFR Part 36 (July 1, 2003).

SUBJECT AREA TO BE ADDRESSED: Design criteria for pay telephone booths to make them accessible to disabled persons.

SPECIFIC AUTHORITY: 350.127, 364.03, 364.3375 FS.

LAW IMPLEMENTED: 364.03, 364.3375 FS.

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

THE WORKSHOP REQUEST MUST BE SUBMITTED IN WRITING TO: Marlene Stern, Office of the General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850.

Any person requiring some accommodation at this workshop because of a physical impairment should call the Division of the Commission Clerk and Administrative Services, (850)413-6770, at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Ray Kennedy, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, (850)413-6584

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

25-24.515 Pay Telephone Service.

(1) through (9) No change.

(10) Each pay telephone station that ~~which~~ provides access to any interexchange company shall provide coin free access, except for Feature Group A access, to all locally available interexchange companies. The pay telephone station shall provide such access through the forms of access purchased by locally available long distance carriers such as 10XXX+0, 10XXXX+0, 101XXXX+0, 950, toll free (e.g., 800, 877, and 888) access.

(11) through (17) No change.

(18)(a) Except as provided in paragraph~~s~~ (18)(b) ~~(d)~~ below, each pay telephone station shall conform to sections 4.1.3(17), 4.2.4, 4.2.5, 4.2.6, 4.5.1, 4.31.2, 4.31.3, and 4.31.5 ~~703.7.2.3 and 704~~ of the ADA Accessibility Guidelines for Buildings and Facilities, Appendix A to 28 CFR Part 36, (July 1, 2003 Edition) ~~American National Standards Accessible and Usable Buildings and Facilities, approved, by the American National Standards Institute, Inc. (ANSI A117.1 1998)~~, which sections are ~~is~~ incorporated by reference into this rule. This rule does not apply to public text telephone and closed circuit telephones.

~~(b) Where there are two or more pay telephone stations located in a group, there shall be a minimum of one telephone per group of ten which conforms to the ANSI standards listed in paragraph (18)(a). The conforming station must be physically located in the group of pay telephone stations or must be installed within a clear line of sight within 15 feet of the group and the route to the conforming station must be free from wheelchair barriers.~~

~~(c) Except for locations on floors above or below entry level in buildings not serviced by a ramp or elevator, pay telephone stations shall be placed in areas accessible to the physically handicapped.~~

(b)~~(d)~~ Pay telephones shall not be installed where the required "clear floor or ground space" provided for in ADA Accessibility Guidelines for Buildings and Facilities ~~ANSI~~ sections 4.2.4.1, 4.2.4.2, and 4.31.2 ~~704.2.1~~ would be reduced by a vehicle parked in a designated parking space.

(19) No change.

(20) Toll Fraud Liability.

(a) A company providing interexchange telecommunications services or local exchange telecommunications services shall not collect from a pay telephone provider for charges billed to a line for calls that ~~which~~ originated from that line through the use of access codes such as 10XXX, 10XXXX, 101XXXX, 950, and toll free (e.g., 800, 877, 888) access codes, or when the call originating from that line otherwise reached an operator position, if the originating line is subscribed to outgoing call screening and the call was placed after the effective date of the outgoing call screening order.

(b) through (23) No change.

Specific Authority 350.127(2) FS. Law Implemented 364.03, 364.035, 364.063, 364.337, 364.3375, 364.345 FS. History–New 1-5-87, Amended 4-14-92, 12-21-92, 2-3-93, 10-10-94, 12-27-94, 9-5-95, 2-1-99, 12-23-02, _____.

DEPARTMENT OF CORRECTIONS

RULE TITLE: RULE NO.:
Early Termination of Supervision 33-302.111

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to delete unnecessary language.

SUBJECT AREA TO BE ADDRESSED: Early termination of supervision.

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 944.09 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Perri King Dale, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-302.111 Early Termination of Supervision.

(1) No change.

(2) In order for an officer to request an ~~Once a recommendation for~~ early termination of supervision from the sentencing or releasing authority, approval must be obtained from the officer's ~~is approved by a~~ supervisor, the circuit administrator, ~~a request must be sent to~~ the State Attorney's Office, and the victim, if applicable ~~requesting their approval~~.

~~(a) If the offense involved a victim, the officer will request the State Attorney's Office to obtain the victim's consent to the early termination. The Recommendation to Early Terminate Probation or Community Control, Form DC3-272, or a letter that contains the information required in Form DC3-272, shall be forwarded to the State Attorney's office, citing the officer's justification for an early termination of supervision. Form DC3-272 is hereby incorporated by reference. A copy of this form may be obtained from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida, 32399-2500. The effective date of this form is 11-26-01.~~

~~(b)~~ If the State Attorney's office denies the request, or the victim opposes the early termination, ~~the officer shall notify the offender that~~ the department will not proceed with the early termination recommendation. The officer shall not disclose a victim's objection to the offender.

~~(3) If the State Attorney's Office approves the recommendation, and the victim does not oppose the early termination, the officer shall prepare an Order Terminating Probation, Form DC3-257, and a letter to the judge outlining the offender's history of supervision and reasons for recommending the early termination. Form DC3-257 is hereby incorporated by reference. A copy of this form may be obtained from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. The effective date of this form is 6-29-03.~~

~~(4) If the State Attorney's office is unable to contact the victim, the officer shall attempt to contact the victim by telephone or by certified letter to provide the victim with an opportunity to have input on the offender's early termination request. If no response is received from the victim, this shall be reported to the judge in the officer's letter.~~

(3)~~(5)~~ The officer shall notify the offender of the judge's decision upon receipt of the judge's response~~, and if the petition for early termination is granted, the officer will provide the offender with a copy of Form DC3-257~~. If the offender was adjudicated guilty, the officer shall review the restoration of civil rights process with the offender. ~~The officer and the offender shall sign and date Form NI1-027, Notification of Restoration of Civil Rights Review Process. In addition to Form DC3-257, the officer shall provide the offender with a termination of supervision letter and Form NI1-027. Form NI1-027 is hereby incorporated by reference. A copy of this form may be obtained from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. The effective date of this form is 6-29-03.~~

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History–New 11-26-01, Amended 6-29-03, _____.

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Works of the District	40D-6
RULE TITLES:	RULE NOS.:
Policy and Purpose	40D-6.011
Definitions	40D-6.021
Implementation	40D-6.031
Permits Required	40D-6.041
Exemptions	40D-6.051
Encroachment Lines	40D-6.091
Content of Application	40D-6.101
Permit Processing Fee	40D-6.201
Conditions for Issuance of Permits	40D-6.301
Duration of Permits	40D-6.321
Modification of Permits	40D-6.331
Completion Report	40D-6.411

PURPOSE AND EFFECT: The purpose of the proposed rulemaking is to repeal Chapter 40D-6, F.A.C. in its entirety. The effect will be to eliminate an obsolete and unnecessary regulatory requirement for Works of the District permits when activities are proposed that will affect a waterbody adopted by the District as a "Works".

SUBJECT AREA TO BE ADDRESSED: Permitting requirements for Works of the District.

SPECIFIC AUTHORITY: 373.044, 373.113, 373.149, 373.171 FS.

LAW IMPLEMENTED: 373.084, 373.085, 373.086, 373.087, 373.103, 373.109, 373.429, 403.813 FS.

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

The District does not discriminate on the basis of disability. Anyone requiring reasonable accommodation should contact: Dianne Lee, (352)796-7211, Ext. 4658, TDD only 1(800)231-6103.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Karen E. West, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, Extension 4651

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

40D-6.011 Policy and Purpose.

~~(1) The purpose of Chapter 40D-6 of these Rules and Regulations is to implement the declared water policy of the Southwest Florida Water Management District and the state of Florida insofar as it relates to the works of the District. The Southwest Florida Water Management District adopted rules relating to protection of the works of the District on February 20, 1964. The Rules so adopted which are still applicable are set forth herein. The Rules in this Chapter are for the protection of the works of the District.~~

~~(2) The Governing Board of the Southwest Florida Water Management District in discharging its duties and responsibilities, has committed itself in writing to the Secretary of the Army to perform the requirements of local cooperation under the project, "Four River Basins, Florida" (H.D. 585, 87th Congress, 2nd Session). Among these requirements is the following:~~

~~"In the case of all canals, reservoir outlets, floodways, and natural streams on which upstream projects works are provided, the necessary floodway should be preserved or the rights thereon secured to permit discharges which would not cause significant damages under present conditions of development."~~

~~(3) The Southwest Florida Water Management District owns, maintains, or has accepted responsibility for certain canals, water control structures, rights-of-way, lakes, and streams, as well as other works which are specifically names in this part as the "Works of the District."~~

~~(4) The protection of existing works from actions which would impair its capacity to accomplish the purpose for which it was intended, and the protection of other works for which planning is under way, is the responsibility of this District.~~

~~(5) These regulations establish procedures to be followed by those who find it necessary to connect to, withdraw water from, discharge water into, place construction within or across, or to otherwise make use of the works of the Southwest Florida Water Management District.~~

~~(6) State laws prohibit such work unless approved by the Governing Board of the District. This approval is usually granted in the form of a permit.~~

~~(7) The permit does not convey any property rights or privileges other than those specified in the permit; it does not authorize any injury to private property or invasion of private rights nor does waive the governing requirements of any other agency or authority. It simply expresses the assent of the Southwest Florida water Management District insofar as concerns the public's interest and protection of the water resources of the District.~~

Specific Authority 373.044, 373.113, 373.149, 373.171 FS., Chapter 61-691, Laws of Florida. Law Implemented 373.084, 373.085, 373.086, 373.087 FS. History–Readopted 10-5-74, Formerly 16J-1.01, 16J-1.001, Repealed _____.

40D-6.021 Definitions.

~~The terms set forth herein shall have the meanings ascribed to them unless the context clearly indicates otherwise and such meanings shall apply throughout Chapter 40D-6 of these Rules and Regulations. The terms defined in Rule 40D-1.102 shall also apply throughout Chapter 40D-6.~~

~~(1) "Tributaries" means the contributing streams and other watercourses including brooks, rills, and rivulets, extending upstream to the point where water usually begins to flow in a regular channel, with an alveus, or bed, and banks or sides, or to the point where the lines of ordinary high water marks converge, whichever extends the farthest up-gradient.~~

~~(2) "Work of the District" means any lake or other impoundment, or stream or other watercourse, control structure, or other facility, owned and maintained by the District or adopted by the Governing Board as a work of the District.~~

Specific Authority 373.044, 373.113, 373.149, 371.171 FS., Chapter 61-691, Laws of Florida. Law Implemented 373.086 FS. History–Readopted 10-5-74, Formerly 16J-1.002, Repealed _____.

40D-6.031 Implementation.

~~(1) Chapter 40D-6 shall continue to be implemented throughout the entire area which remained as part of the District after the transfer pursuant to Chapter 76-243, Laws of Florida, which occurred at 11:59 p.m. on December 31, 1976; and shall be immediately implemented in the areas transferred as a part of the District pursuant to Chapter 76-243, Laws of Florida, which occurred at 11:59 p.m. on December 31, 1976. In addition, Chapter 40D-6 shall be immediately implemented in the area transferred as a part of the District pursuant to Chapter 78-65, Laws of Florida, which occurred on July 1, 1978. If any provisions of Chapter 40D-6 are inconsistent with prior rules and procedures, the new provisions shall apply commencing July 1, 1977.~~

~~(2) The following have been declared to be "Works of the District" by the Governing Board of the Southwest Florida Water Management District through the adoption of the indicated resolutions and motions:~~

~~(a) The Hillsborough River, its natural floodway and tributaries, connecting channels, canals, and lakes. By Resolution No. 63, dated October 9, 1963.~~

~~(b) The Oklawaha River, its natural floodway and tributaries, connecting channels, canals, and lakes. By Resolution No. 63, dated October 9, 1963.~~

~~(c) The Withlacoochee River, its natural floodway and tributaries, connecting channels, canals, and lakes, By Resolution No. 63, dated October 9, 1963.~~

~~(d) The Peace River, its natural floodway and tributaries, connecting channels, canals, and the lakes which are regulated by the District control structures, including their connecting channels and canals. By Resolution No. 63, dated October 9, 1963.~~

~~(e) The authorized Green Swamp Basin reservoirs, connecting channels, control structures, and discharge channels below reservoirs. (Note: The land areas required for the three (3) areas, reservoirs must be protected against encroachment by private or public works to insure proper functioning of the "Four River Basins, Florida" projects.) By Resolution No. 63, dated October 9, 1963.~~

~~(f) The Anclote River, its natural floodway and tributaries, connecting channels, canals, and lakes. By Resolution No. 63, dated October 9, 1963.~~

~~(g) Lake Tarpon, its connecting channels and canals, including the Lake Tarpon Outfall Canal. By Resolution No.63, dated October 9, 1963.~~

~~(h) Old Tampa Bay north of Courtney Campbell Causeway and all tributary streams, channels, and canals discharging therein. By Resolution No. 63, dated October 9, 1963.~~

~~(i) The Alafia River, its natural floodway and tributaries, connecting channels, canals, and lakes. By Resolution No. 63-A, adopted March 17, 1965.~~

~~(j) The Little Manatee River, its natural floodway and tributaries, connecting channels, canals, and lakes. By Resolution No. 63-A, adopted March 17, 1965.~~

~~(k) The Palm River and Six Mile Creek, their natural floodways and tributaries, connecting channels, canals, and lakes. By Resolution No. 63, dated October 9, 1963.~~

~~(l) The Pithlachascootee River, its natural floodway and tributaries, connecting channels, canals, and lakes. By motion adopted March 15, 1967.~~

~~(m) The Waccasassa River, its natural floodway and tributaries, connecting channels, canals, and lakes. By motion adopted March 15, 1967.~~

~~(n) McKay Bay north of 22nd Street Causeway, all tributaries, channels, and canals discharging therein. By motion adopted March 15, 1967.~~

~~(o) The Weeki Wachee River, its natural floodway, tributaries, connecting channels and canals. By motion adopted March 13, 1968.~~

~~(p) Lake Sloan, in Hillsborough County, together with its natural floodways and tributaries, connecting canals and lakes. By Resolution No. 538, dated April 10, 1974.~~

~~(q) Crystal River, its natural floodways and tributaries, connecting channels, canals, and lakes. By Resolution No. 542, dated April 10, 1974.~~

~~(r) Homosasa River, its natural floodways and tributaries, connecting channels, canals, and lakes. By Resolution No. 542, dated April 10, 1974.~~

~~(s) Chassahowitzka River, its natural floodways and tributaries, connecting channels, canals, and lakes. By Resolution No. 542, dated April 10, 1974.~~

~~(t) Bullfrog Creek, north of Big Bend Road (S.R. 672).~~

~~(u) Delany Creek, west of the eastern boundary of Section 30, Township 29S, Range 20E.~~

Specific Authority 373.044, 373.113, 373.149, 373.171 FS., Chapter 78-65, Laws of Florida. Law Implemented 373.069, 373.084, 373.085, 373.086, 373.087 FS. History–Readopted 10-5-74, Amended 7-21-77, 10-16-78, Formerly 16J-1.003, 16J-1.03, Repealed _____.

40D-6.041 Permits Required.

~~Unless expressly exempted under Rule 40D-6.051, a permit shall be required to connect to, withdraw water from, discharge water into, place construction within or across, or otherwise make use of a work of the District or to remove any facility or otherwise terminate such activity.~~

Specific Authority 373.044, 373.113, 373.149, 373.171 FS., Chapter 61-691, Laws of Florida. Law Implemented 373.084, 373.085, 373.086, 403.813 FS. History–Readopted 10-5-74, Amended 12-31-74, 8-2-78, Formerly 16J-1.05(1), Repealed _____.

40D-6.051 Exemptions.

~~A permit shall not be required:~~

~~(1) To remove any dock, pier, piling, or boat house.~~

~~(2) To construct, alter, or remove any pumping facility withdrawing water from any stream, lake, or pond for individual domestic use or for watering residential lawns and shrubs so long as such activity does not breach or alter the bank of shoreline of constitute a hindrance to the flow of any stream or other watercourse which is a work of the District, provided however, that Chapter 40D-2 shall apply to the use of water for such purposes.~~

~~(3) To temporarily dewater an area within the limits of a work of the District for construction, alteration, or repair of buildings or other foundations and roadways, or during installation, alteration, or repair of utility pipelines, cables, culverts, and catch basins, when such temporary dewatering will be for a period not exceeding six (6) months; provided however, that the District shall be advised in writing prior to commencing such activity. A permit shall be required prior to continuation of dewatering activities beyond the initial six (6) month period.~~

~~(4) For activities exempted from Chapter 373 permits by Section 403.813(2), Florida Statutes, as amended by Chapter 78-146, Laws of Florida.~~

~~(5) For activities which receive an Environmental Resource Permit from the District under Chapters 40D-4, -40 or -400, F.A.C.~~

Specific Authority 373.044, 373.113, 373.149, 373.171 FS. Law Implemented 373.084, 373.085, 373.086, 403.813 FS. History–Readopted 10-5-74, Amended 12-31-74, 8-2-78, Formerly 16J-1.051(2), Amended 10-26-00, Repealed _____.

40D-6.091 Encroachment Lines.

~~(1) The Board, after Notice and hearing, may establish encroachment lines and prohibit or restrict construction out into the waters in works of the District beyond such lines.~~

~~(2) Encroachment lines shall become effective upon recording in the public records of the county wherein such lines are located.~~

~~(3) Hillsborough River Encroachment Line.~~

~~(a) No solid fill, bulkhead or seawall will be allowed out into the Hillsborough River, in Hillsborough County, beyond an encroachment line which has been established by the Governing Board for that portion of the river extending downstream from the City of Tampa Dam to the Columbus Drive Bridge unless an exception is granted by the Board as provided in Rule 40D-6.301(3).~~

~~(b) A legal description of this encroachment line has been recorded in the Official Record book 2047, beginning on page 499 of the Public Records of Hillsborough County, Florida. Arial photo maps upon which have been shown the location of such encroachment line have also been recorded in the same Official Record Book beginning on page 505.~~

Specific Authority 373.044, 373.113, 373.149, 373.171 FS., Chapter 61-691, Laws of Florida. Law Implemented 373.084, 373.085, 373.086 FS. History–Readopted 10-5-74, Amended 8-11-80, Formerly 16J-1.40, 16J-1.41, Repealed _____.

40D-6.101 Content of Application.

~~(1) A Permit application shall be sworn to and dated by the applicant or his duly authorized agent and shall be filed with the Board on forms provided by the Board which shall include:~~

~~(a) The name and address of the applicant.~~

~~(b) The name and address of the owner or owners of the land upon which the construction or alteration is to take place, and a legal description of such land.~~

~~(c) Location of the work.~~

~~(d) Plans and specifications.~~

~~(e) The name and address of the person who prepared the plans and specifications.~~

~~(f) The name and address of the person who will construct the proposed work, when available.~~

~~(2) The Board may also require the applicant to submit other information deemed necessary.~~

Specific Authority 373.044, 373.113, 373.149, 373.171 FS., Chapter 61-691, Laws of Florida. Law Implemented 373.084, 373.085, 373.086 FS. History–Readopted 10-5-74, Amended 12-31-74, Formerly 16J-1.06(1),(2), Repealed _____.

40D-6.201 Permit Processing Fee.

~~A permit processing fee shall be paid to the District at the time a permit application is filed in the amount prescribed in the schedule set forth in Rule 40D-1.607(12), F.A.C.~~

Specific Authority 373.044, 373.113, 373.149, 373.171 FS. Law Implemented 373.109 FS. History–Readopted 10-5-74, Formerly 16J-1.061, Amended 10-26-00, Repealed _____.

40D-6.301 Conditions for Issuance of Permits.

~~(1) To obtain a permit under Chapter 40D-6, the permitted activity:~~

~~(a) Must be reasonable and beneficial; and~~

~~(b) Must not be inconsistent with the public interest.~~

~~(2) Issuance of a permit will be denied if the permitted activity:~~

~~(a) Will place fill material, or any non water use related structure within the mean annual floodplain of a lake or other impoundment, or of a stream or other watercourse.~~

~~(b) Will cause significant adverse effects on lands not owned, leased, or otherwise controlled by the applicant by drainage or inundation.~~

~~(c) Will restrict or alter the rate of flow of a steam or other watercourse within the floodplain of a twenty five (25) year flood unless the land is owned, leased, or otherwise controlled by the applicant.~~

~~(d) Will place solid fill, a bulkhead, or a seawall beyond a line of encroachment established by the Board.~~

~~(e) Will cause an increase or decrease in the rate of flow of a stream or other watercouse by five percent (5%) or more.~~

~~(f) Will cause an increase in the peak rate of flow or total volume of storm runoff by ten percent (10%) or more from lands owned, leased, or otherwise controlled by applicant.~~

~~(3) The Board for good cause shown may grant exceptions to the provisions of subsection (2) above when, after consideration of all data presented, including economic information, it finds that it is not inconsistent with the public interest.~~

Specific Authority 373.044, 373.113, 373.149, 373.171 FS., Chapter 61-691, Laws of Florida. Law Implemented 373.084, 373.085, 373.086 FS. History–Readopted 10-5-74, Amended 12-31-74, 8-11-80, Formerly 16J-1.06(3),(4),(5), Repealed _____.

40D-6.321 Duration of Permits.

~~Unless revoked or otherwise modified, the duration of a Works of the District Permit issued pursuant to this chapter is:~~

~~(1) five years from the date of issuance to the completion of construction and submittal of the Statement of Completion and Request for Transfer to Operation Entity, including the supporting as-built documents;~~

~~(2) perpetual from the date of authorization by the District for operation by the entity identified in the permit.~~

Specific Authority 373.044, 373.113, 373.149, 373.171 FS., Law Implemented 373.084, 373.085, 373.086, 371.103 FS. History–New 10-26-00, Repealed _____.

40D-6.331 Modification of Permits.

~~The Board may modify or revoke a permit at any time if it determines that the permitted work or works has become a danger to the public health or safety or if its operation has become inconsistent with the objectives of the District or is in violation of any regulation or order of the District, or the conditions of the permit.~~

Specific Authority 373.044, 373.113, 373.149, 373.171 FS., Chapter 61-691, Laws of Florida. Law Implemented 373.084, 373.085, 373.086 FS. History–Readopted 10-5-74, Amended 12-31-74, Formerly 16J-1.06(3),(4),(5), Amended 7-2-98, Repealed _____.

40D-6.411 Completion Report.

~~Within thirty (30) days after the completion of construction or alteration for which a permit was granted by the District, the permittee shall file with the District a Statement of Completion and Request for Transfer to Operation Entity, as identified in Rule 40D-1.659, F.A.C.~~

Specific Authority 373.044, 373.113, 373.149, 373.171 FS. Law Implemented 373.084, 373.085, 373.086 FS. History–Readopted 10-5-74, Formerly 16J-1.10, Amended 10-26-00, Repealed _____.

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE TITLE: RULE NO.:
Community Behavioral Health Services 59G-4.050

PURPOSE AND EFFECT: The purpose of this rule amendment is to change the name of the Community Mental Health Services Program to Community Behavioral Health Services Program and incorporate by reference the Florida Medicaid Community Behavioral Health Services Coverage and Limitations Handbook, October 2004. The handbook revisions include modifications to procedure codes mandated by the federal Health Insurance Portability and Accountability Act (HIPAA) and implementation of a recovery model for delivery of behavioral health services. The effect will be to incorporate by reference in the rule the Florida Medicaid Community Behavioral Health Services Coverage and Limitations Handbook, October 2004.

This Notice of Rule Development replaces the notice that was published in the Florida Administrative Weekly, Vol. 29, No. 40, on October 3, 2003. We are publishing a new Notice of Rule Development, because the revised handbook will be effective October 2004.

SUBJECT AREA TO BE ADDRESSED: Community Behavioral Health Services.

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.906, 409.908, 409.9081, 409.913 FS.

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

TIME AND DATE: 2:00 p.m., Tuesday, August 24, 2004

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Conference Room C, Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Michelle Comeaux, Medical/Health Care Program Analyst, Medicaid Services, 2727 Mahan Drive, Mail Stop #20, Tallahassee, FL 32308, (850)921-8288

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

59G-4.050 Community Behavioral ~~Mental~~ Health Services.

(1) No change.

(2) All community behavioral ~~mental~~ health services providers enrolled in the Medicaid program must be in compliance ~~comply~~ with the Florida Medicaid Community Behavioral ~~Mental~~ Health Services Coverage and Limitations

Handbook, October 2004 ~~July 2000~~, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, CMS ~~HCFA~~-1500 ~~and Child Health Check-Up 221~~, which is incorporated in 59G-4.001 ~~59G-5.020~~, F.A.C. Both handbooks are available from the Medicaid fiscal agent.

(3) The following forms, which are included in the Community Behavioral Health Coverage and Limitations Handbook, are incorporated by reference: Limited Service Authorization, October 2004; Authorization for Comprehensive Behavioral Health Assessment, October 2004; Comprehensive Behavioral Health Assessment Provider Certification, October 2004; Specialized Therapeutic Foster Care Provider Agency Certification, October 2004; Authorization for Specialized Therapeutic Foster Care, October 2004; Authorization for Crisis Intervention, October 2004; Provider Agency Self-Certification Form Behavioral Health Overlay Services, Department of Juvenile Justice, October 2004; Provider Agency Certification Form Behavioral Health Overlay Services, Department of Juvenile Justice, October 2004; Certification of Eligibility for Behavioral Health Overlay Services, Department of Juvenile Justice, October 2004; Provider Agency Self-Certification Form Therapeutic Group Home Services, October 2004; Therapeutic Group Care Services Provider Agency Certification, October 2004; Authorization for Therapeutic Group Care Services, October 2004; Certification of Eligibility for Behavioral Health Overlay Services, Child Welfare, October 2004; Provider Agency Self-Certification Form Behavioral Health Overlay Services, Child Welfare, October 2004; Provider Agency Certification Form Behavioral Health Overlay Services, Child Welfare, October 2004.

Specific Authority 409.919 FS. Law Implemented 409.906, 409.908, 409.9081, 409.913 FS. History–New 1-27-82, Amended 10-25-84, Formerly 10C-7.525, Amended 1-19-94, Formerly 10C-7.0525, Amended 9-21-98, 11-14-00, _____.

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE TITLE: RULE NO.:

Payment Methodology for ICF/MR-DD Services in Publicly Owned and Publicly Operated Facilities 59G-6.040

PURPOSE AND EFFECT: The purpose and effect of the proposed amendment is to incorporate changes to the Florida Title XIX ICF/MR-DD Services in Publicly Owned and Publicly Operated Facilities Reimbursement Plan (the Plan) payment methodology.

1. In accordance with Chapter 2004-344, Laws of Florida (SB 1064, 2004-05 Florida Legislature) Section 7(6), COST REPORTS – For any Medicaid provider submitting a cost report to the agency by any method, and in addition to any other certification, the following statement must immediately precede the dated signature of the provider's administrator or chief financial officer on such cost report: "I certify that I am familiar with the laws and regulations regarding the provision of health care services under the Florida Medicaid program, including the laws and regulations relating to claims for Medicaid reimbursements and payments, and that the services identified in this cost report were provided in compliance with such laws and regulations."
2. Change from "Health Care Financing Administration (HCFA)" to "Centers for Medicare and Medicaid Services (CMS)."
3. Updates to Code of Federal Regulation (CFR), Florida Administrative Code (FAC), and Florida Statute references.

SUBJECT AREA TO BE ADDRESSED: ICF/MR-DD Services in Publicly Owned and Publicly Operated Facilities cost reports.

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.908 FS.

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

TIME AND DATE: 2:00 p.m., August 25, 2004

PLACE: 2727 Mahan Drive, Conference Room D, Building 3, Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Robert C. Butler, Medicaid Cost Reimbursement, Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Room 2120B, Tallahassee, Florida 32308, (850)414-2756

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE FROM THE CONTACT PERSON LISTED ABOVE.

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE TITLE: RULE NO.:

Payment Methodology for County Public Health Unit Services 59G-6.090

PURPOSE AND EFFECT: The purpose and effect of the proposed amendment is to incorporate changes to the Florida Title XIX Payment Methodology for County Health Departments Reimbursement Plan (the Plan).

1. In accordance with 2004-344, Laws of Florida (SB 1064, 2004-05 Florida Legislature) Section 7(6). COST REPORTS – For any Medicaid provider submitting a cost report to the agency by any method, and in addition to any other certification, the following statement must immediately precede the dated signature of the provider's administrator or chief financial officer on such cost report: "I certify that I am familiar with the laws and regulations regarding the provision of health care services under the

Florida Medicaid program, including the laws and regulations relating to claims for Medicaid reimbursements and payments, and that the services identified in this cost report were provided in compliance with such laws and regulations."

2. Updates to Code of Federal Regulation (CFR), Florida Administrative Code (FAC), and Florida Statute references.

SUBJECT AREA TO BE ADDRESSED: County Health Departments cost reports.

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.908 FS.

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

TIME AND DATE: 3:00 p.m., August 25, 2004

PLACE: 2727 Mahan Drive, Conference Room D, Building 3, Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Robert C. Butler, Medicaid Cost Reimbursement, Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Room 2120B, Tallahassee, Florida 32308, (850)414-2756.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE FROM THE CONTACT PERSON LISTED ABOVE.

DEPARTMENT OF MANAGEMENT SERVICES

Division of Purchasing

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
General Regulations	60A-1
RULE TITLES:	RULE NOS.:
Identical Responses Received	60A-1.011
Insurance	60A-1.015
Less Than Two Responses Received	60A-1.071

PURPOSE AND EFFECT: The purpose of these changes and additions is to modernize the "Tie Bid" provisions in keeping with prior rulemaking workshop discussions; to delete an obsolete provision from the Insurance rule; and to clarify agency procedures when few or no responses to a solicitation are received.

SUBJECT AREA TO BE ADDRESSED: Tie bids, the Department of Management Service's purchase of insurance, and the issue of agencies receiving less than two responsive bids (for background on the last matter see Section 287.0057(6), F.S. and current subsection 60A-1.002(5), F.A.C.)

SPECIFIC AUTHORITY: 287.042(12) FS.

LAW IMPLEMENTED: 287.057(6), 287.082, 287.084, 287.087, 287.092 FS.

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

TIME AND DATE: 2:00 p.m., Tuesday, August 24, 2004

PLACE: Room 101, 4050 Esplanade Way, Tallahassee, FL 32399-0950

Pursuant to the Americans with Disabilities Act, persons needing special accommodations to participate in this meeting should advise the Department at least two days before the hearing, by contacting: Julie Shaw, (850)487-3423.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Richard Brown, Division of State Purchasing, Department of Management Services, Suite 360D, 4050 Esplanade Way, Tallahassee, Florida 32399-0950

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

(Substantial rewording of Rule 60A-1.011 follows. See Florida Administrative Code for current text.)

60A-1.011 Identical Responses Received ~~(Tie) Bids/ Proposals, Commodities/Contractual Services~~.

(1) Criteria. When evaluating vendor responses to solicitations, if the agency is confronted with identical pricing or scoring from multiple vendors, the agency shall determine the order of award using the following criteria, in the order of preference listed below (from highest priority to lowest priority):

(a) The response is from a Florida-domiciled entity, as determined by the Department of State;

(b) If the response relates to manufactured commodities, the response provides for manufacturing such commodities within the state (in preference over any foreign manufacturer);

(c) If the response relates to manufactured commodities, the response provides for a foreign manufacturer that also has at least 200 employees working in the state (in preference over a foreign manufacturer with less than 200 employees working in the state); or

(d) The response certifies that a drug-free workplace has been implemented in accordance with Section 287.087, F.S.

(2) No Applicable Criteria. If none of the criteria in subsection (1) are applicable, the agency may determine the order of award by using the number of valid vendor complaints of file or by a means of random selection (e.g., a coin toss or drawing of numbers).

Specific Authority 287.042(12) FS. Law Implemented 287.082, 287.084, 287.087, 287.092 FS. History–New 2-6-68, Revised 5-20-71, Amended 7-31-75, 10-1-78, 8-6-81, 2-13-83, 10-13-83, 3-1-84, Formerly 13A-1.11, Amended 11-3-88, 4-10-91, Formerly 13A-1.011, Amended _____.

60A-1.015 Insurance.

(1) Insurance shall be purchased for all agencies by State Purchasing whenever any part of the premium is paid by the State with the exception of title insurance for land acquisition, the State Group Health, and Life Programs, administered by the Department of Management Services and Self-Insurance Trust Fund administered by the Department of Financial Services, Division of Risk Management. Agencies may make emergency purchases of insurance pursuant to Section 287.057(5)(a), F.S. Requests for the purchase, renewal or endorsement of insurance and bonds shall be initiated in writing by authorized personnel of the requesting agency and submitted to State Purchasing. No agency shall contact the agent of record representing the insurance carrier with the exception of reporting a claim.

(2) All claims reports shall be submitted by the agency to the agent of record representing the insurance carrier. Any loss due to an alleged criminal act shall be reported immediately upon discovery to the appropriate law enforcement agency.

~~(3) Invoices will be forwarded by State Purchasing to the Department of Financial Services for the initial rate approval. The Department of Financial Services will transmit the invoice and rate approval to the State agency for payment. All renewals and endorsements with the same rate as previously approved by the Department of Financial Services will be transmitted to the State agency by the Department of Management Services. Covered agencies shall submit all premium payments directly to the agent of record representing the insurance carrier. Payments are to be made in accordance with Section 215.422, F.S.~~

Specific Authority 287.042(12) FS. Law Implemented 287.022 FS. History–New 8-6-81, Amended 11-4-82, Formerly 13A-1.15, Amended 11-3-88, 1-18-90, 4-10-91, 9-1-92, Formerly 13A-1.015, Amended 8-24-93, 1-9-95, 7-6-98, 1-2-00, 6-21-04, _____.

60A-1.071 Less Than Two Responses Received.

(1) Review of Solicitation Process. If, after receiving responses to a solicitation, the agency determines that there are less than two submissions that are both (i) responsive and (ii) received from responsible vendors (as those phrases are defined in Rule 60A-1.001, F.A.C.), the agency shall review the solicitation specifications and process in order to determine what caused the lack of acceptable responses.

(2) Re-Soliciting. If the results of the review discussed in paragraph (1) indicate that a second competitive solicitation would result in additional competition and that such additional competition is in the best interests of the state, the agency shall issue a notice of no award for the current solicitation. If acquiring the commodity or service is still in the best interest of the agency, the agency shall re-initiate its procurement processes, considering the additional information gained by its review.

(3) Accepting a Single Response. If (i) the results of the review discussed in paragraph (1) indicate that a second competitive solicitation would not result in additional competition, (ii) the agency receives a single responsive submission from a responsible vendor, and (iii) the agency determines that awarding to the responsive and responsible vendor is in the best interest of the state, the agency shall award the solicitation to that vendor.

(4) Negotiating with Respondents. If the results of the review discussed in paragraph (1) above indicate that a second competitive solicitation would not result in additional competition, and the agency cannot make the determinations required by paragraph (3) above, the agency shall negotiate with the respondents to the solicitation and award to the final offer determined to be in the best interests of the state. An agency electing to negotiate under this subsection shall inform the Department of its action by submitting PUR 5887 (08/04), which is hereby incorporated by reference. The form is available at http://dms.myflorida.com. The agency may negotiate serially (rather than concurrently), if it makes one of the following determinations:

(a) The agency determines that a respondent was responsive and responsible, and negotiates serially beginning with that responsive and responsible vendor, or

(b) The agency determines that serial negotiation is in the best interests of the State.

(5) Rejecting All Responses. This section is not intended to affect an agency's rights under Section 120.57(3)(f), F.S.

Specific Authority 287.042(12) FS. Law Implemented 287.057(6) FS. History–New _____.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Pilot Commissioners

RULE TITLE: RULE NO.:

Exemption from Licensure Renewal Provisions for Spouses of Members of the Armed Forces of the United States 61G14-12.003

PURPOSE AND EFFECT: The Board proposes the development of a rule to address an exemption from licensure renewal provisions for spouses of members of the Armed Forces.

SUBJECT AREA TO BE ADDRESSED: An exemption from licensure renewal provisions for spouses of members of the Armed Forces.

SPECIFIC AUTHORITY: 310.185(1), 455.02(2) FS.

LAW IMPLEMENTED: 455.02(2) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Anthony Spivey, Executive Director, Board of Pilot Commissioners, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

61G14-12.003 Exemption from License Renewal Provisions for Spouses of Members of the Armed Forces of the United States.

(1) As used in this rule, the following definitions shall apply:

(a) "Pilot" shall include both licensed state pilots and certified deputy pilots.

(b) "Armed forces" shall include the Army, Navy, Marine Corps, Air Force, Coast Guard and National Guard.

(2) A pilot who is the spouse of a member of the Armed Forces of the United States shall be exempt from all licensure renewal provisions and placed on inactive status for any period of time which the pilot is absent from the State of Florida due to the pilot's spouse's duties with the Armed Forces, subject to the following conditions:

(a) Copies of the military orders requiring the absence of the pilot's spouse from the port where the pilot is licensed or certified are submitted to the Board office.

(b) The licensed state pilots at the port affected by the seeking of an exemption under this provision shall, in consultation with customers of the affected port, jointly submit to the Board a plan to provide adequate piloting during the inactive status of the pilot seeking exemption. This plan shall include recommendations concerning:

1. Cross-licensing of additional pilots from other ports;

2. Declaration of a port opening for the next scheduled examination;

3. Combination of the affected port with another port; or

4. Other measures designed to assure the provision of adequate piloting during the inactive status of the pilot seeking exemption.

(3) Withing 45 days of completion of duty with the Armed Forces outside the State of Florida by the pilot's spouse, and prior to resuming duties as a pilot, the affected pilot shall:

(a) Ensure that all physical examinations and reports, as required by Rule 61G14-20.001, F.A.C., are current and on file.

(b) If the period of absence from piloting duties exceeds 365 days, complete, under the guidance of a licensed state pilot of that port, four familiarization transits of the port where licensed or certified.

Specific Authority 310.185(1), 455.02(2) FS. Law Implemented 455.02(2) FS. History–New_____.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Florida Real Estate Commission

RULE TITLE: RULE NO.:
Examination Areas of Competency 61J2-2.029

PURPOSE AND EFFECT: The purpose of the proposed rule development workshop is to discuss areas of competency relating to real estate examinations.

SUBJECT AREA TO BE ADDRESSED: The proposed rule development affects rule provisions relating to examination areas of competency for real estate licensure.

SPECIFIC AUTHORITY: 475.05 FS.

LAW IMPLEMENTED: 455.217(1)(b) FS.

IF REQUESTED IN WRITING, WITHIN 14 DAYS OF THE DATE OF THIS NOTICE, AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW. AN ADDITIONAL HEARING WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

TIME AND DATE: 8:30 a.m. or as soon thereafter as possible, August 17, 2004

PLACE: Division of Real Estate, Commission Meeting Room 901, North Tower, 400 West Robinson Street, Orlando, Florida 32801

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Lori Crawford, Deputy Clerk, Division of Real Estate, 400 West Robinson Street, Hurston Building, North Tower, Suite N801, Orlando, Florida 32801

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

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

School Psychology

RULE TITLE: RULE NO.:
Continuing Education Credit Guidelines 64B21-502.004

PURPOSE AND EFFECT: The Department of Health proposes to review the existing text in this rule to determine if amendments are necessary.

SUBJECT AREA TO BE ADDRESSED: Continuing education credit guidelines.

SPECIFIC AUTHORITY: 490.015 FS.

LAW IMPLEMENTED: 490.0085 FS.

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

THE PERSON TO BE CONTACED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Kaye Howerton, Executive Director, Department of Health, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

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

DEPARTMENT OF HEALTH

Division of Environmental Health

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Standards for the Certification of Environmental Health Professionals	64E-18
RULE TITLES:	**RULE NOS.:**
General Provisions	64E-18.001
Definitions	64E-18.002
Requirements for Certification	64E-18.003
Issuance of Certificates and Renewals	64E-18.004
Notifications of Changes	64E-18.005
Standards of Practice	64E-18.007
Disciplinary Guidelines	64E-18.008
Grandfathering	64E-18.091
Fees	64E-18.010

PURPOSE AND EFFECT: The proposed changes create areas which have been omitted and bring current or enhance other areas, eliminate unneeded sections and strengthen weak areas as identified by the regulated community and regulatory officials.

SUBJECT AREA TO BE ADDRESSED: The changes will add and/or revise definitions, update educational requirements, revise time requirements for precertification coursework, be user friendly during the renewal period by adding an inactive period, enhance standards of practice and disciplinary guidelines, eliminate grandfathering and revise and redefine the fee structure.

SPECIFIC AUTHORITY: 381.0010 FS.

LAW IMPLEMENTED: 381.0101 FS.

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

TIME AND DATE: 3:00 p.m., August 16, 2004

PLACE: 4042 Bald Cypress Way, Conference Room 301, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: David B. Wolfe, Environmental Health Program Consultant, Bureau of Community Environmental Health, 4052 Bald Cypress Way, Bin #A08, Tallahassee, FL 32399-1710, (850)245-4277 (An electronic copy of the proposed rule can be obtained without cost by contacting David B. Wolfe at the above address)

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

64E-18.001 General Provisions.

Persons shall not perform environmental health or sanitary evaluations in a primary area unless certified by the Department of Health (henceforth referred to as department) in accordance with the provisions of this chapter.

Specific Authority 381.0011, 381.0101(4),(5) FS. Law Implemented 381.0101(1) FS. History–New 9-21-94, Amended 8-20-96, Formerly 10D-123.001, Amended 3-2-98, Repromulgated _____.

64E-18.002 Definitions.

(1) Accredited – means a degree granting institution recognized as meeting acceptable levels of quality and performance by the American Council on Education.

(2)~~(1)~~ Administrative position – a position responsible for planning, organizing, evaluating, or directing the work of field personnel, supervisory personnel, or other administrative environmental health professionals.

(3)~~(2)~~ Environmental Health Services – also referred to as services. These are activities, or the supervision thereof, which are a routine part of environmental health work, such as inspections, evaluations, preparation of reports, analysis of data, interpretation of data and laboratory reports, consultations with other health professionals or the public regarding results of evaluations and sampling efforts, and the recommending of prescribed courses of action to alleviate unsanitary or hazardous conditions. These services are provided based on a knowledge and understanding of technical and scientific environmental health principles.

(4)~~(3)~~ Field position – a position primarily responsible for performing evaluations and inspections, collecting samples, conducting field tests of equipment, participating in enforcement activities, and providing public information on environmental program activities. Examples of work conducted by an individual working in a field position assigned to a primary program area of food protection would be performing assessments of sanitary conditions in a food operation, or collecting and analyzing information from persons involved in a foodborne illness investigation. An example of a person performing field work in a primary program area of onsite sewage treatment and disposal would be evaluating the siting and construction of an onsite sewage treatment and disposal system for compliance with minimum state standards.

(5)~~(4)~~ Florida Environmental Health Association – a not for profit professional association located at 3539 Apalachee Parkway #215, Tallahassee, FL 32311 ~~Post Office Box 271823, Tampa, Florida 33688-1823~~ which provides training, testing, and educational services for environmental health professionals working in Florida.

(6)~~(5)~~ Food protection program work – activity associated with the evaluation of facilities and techniques used by individuals and companies providing foods to the public. Included would be the educational activities directed toward informing food managers and food workers in the proper application of sanitary techniques or the investigation of foodborne disease reports.

(7)~~(6)~~ Supervisor position – this position is responsible for supervision of field personnel, some of whom may or may not yet be certified in a primary area of environmental health practice.

(8)~~(7)~~ National Environmental Health Association – a not for profit professional association located at 720 South Colorado Boulevard, Suite 970, Denver, Colorado 80222 which provides training, testing, and educational services for environmental health professionals working in the United States.

(9)~~(8)~~ Onsite sewage treatment and disposal system program work – activities associated with the evaluation and site location of any ~~domestic wastewater~~ treatment and disposal systems under the regulatory authority of the Florida Department of Health. Included in this activity would be site location and evaluation activities associated with the treatment and disposal of septage ~~residuals~~ created during the wastewater treatment process, and the regulation of contractors performing system construction, maintenance, and septage ~~residuals~~ disposal services.

(10)~~(9)~~ Registered Environmental Health Specialist – a person who has displayed knowledge of a primary area of environmental health and has been certified as knowledgeable by either the Florida Environmental Health Association or the National Environmental Health Association.

(11)~~(10)~~ Repeat Violation – any violation on which disciplinary action is being taken where the same individual has previously had disciplinary action taken against him or her and has received a penalty other than a letter of warning in a prior case. This definition applies regardless of the chronological relationship of the violations and regardless of whether the violations are of the same or different subsections of this rule.

Specific Authority 381.0011, 381.0101(4),(5) FS. Law Implemented 381.0101(2),(5),(8) FS. History–New 9-21-94, Amended 8-20-96, Formerly 10D-123.002, Amended 3-2-98, _____.

64E-18.003 Requirements for Certification.

(1) Persons subject to certification – A person shall be subject to the requirements of this rule if he or she is employed or assigned to provide environmental health services in any primary environmental health program, as defined in Section 381.0101(2), F.S.

(2) A person seeking certification in any primary program area shall apply to the department on DH Form 4100, Application for Environmental Health Professional Certification, November 2004 ~~1997~~, incorporated by reference in this rule. An application fee shall be submitted for the first primary environmental health program in which the applicant seeks certification.

(3) A person shall be eligible for certification if they meet the following requirements:

(a) Applicants beginning work in a primary area of environmental health on or after September 21, 1994 must have a bachelor's degree from an accredited college or university with major coursework in environmental health, environmental science, or a physical or biological science. Final authority on disciplines qualifying as a physical or biological science are listed under "Academic Disciplines and Corresponding Majors" in the Appendix of the October 1995 edition of Determining Eligibility for State Employment, Department of Management Services, State of Florida, incorporated by reference in this rule. Major course work is no less than 30 semester hours or 40 quarter hours of class work ~~in any of the following areas.~~:

~~1. Chemistry~~
~~2. Biology~~
~~3. Physics or physical science~~
~~4. Health Science~~
~~5. Earth Science~~
~~6. Environmental Science~~
~~7. Epidemiology or biostatistics~~

(b)~~(8)~~ Other areas of study which are germane to the practice of environmental or public health, though not necessarily based on the application of scientific methods. Examples of these would be public health law, environmental law, ~~or~~ health planning, soil science, food science, or epidemiology and would be determined by the Bureau of Community Environmental Health.

(c)~~(b)~~ All applicants must submit the necessary exhibits and fees as described in (4) below.

(4) Completed applications for certification must be received by the department's Bureau of Community Environmental Health ~~Programs~~ at least 60 days prior to examination. In order to be complete, the application must have all spaces correctly completed, be signed by the applicant, include a money order or sufficiently funded check in the correct amount as specified in paragraph 64E-18.010(1)(a),

F.A.C., and if employed on or after September 21, 1994, shall include official copies of transcripts from the colleges or universities from which the applicant graduated.

(5) Within 45 ~~30~~ days of receipt of the completed application by the department, the applicant shall be notified as to whether he or she meets the general requirements of this rule and is eligible for certification.

(a) If eligible for certification, the department shall notify the applicant of the schedule for classes and program examinations.

(b) If an applicant is determined to be ineligible for certification, the department shall provide the applicant with a letter of denial, giving the reasons for the determination.

(6) Applicants seeking certification in the Onsite Sewage Treatment and Disposal System Program must:

(a) Successfully complete a minimum of 24 ~~30~~ hours of department approved pre-certification course work. At a minimum this course work shall include training and testing on soil classification, system design and theory, system material and construction standards, and regulatory requirements, and;

(b) Successfully pass the ~~an~~ examinations administered by the department. Minimum passing score shall be a 70 percent correct response to all questions comprising the exam.

(7) Applicants seeking certification in the Food Protection Program must:

(a) Successfully complete a minimum of 24 hours of department approved pre-certification course work. At a minimum this course work shall include training and testing on food microbiology, foodborne illness investigations, and basic hazard analysis and critical control points (HACCP) and;

(b) Successfully pass the precertification coursework and certification ~~an~~ examinations administered or approved by the department. Minimum passing score shall be a 70 percent correct response to all questions comprising the exam unless the approved course provider requires a higher score.

(8) through (15) No change.

Specific Authority 381.0011, 381.0101(4),(5) FS. Law Implemented 381.0101 FS. History–New 9-21-94, Amended 8-20-96, Formerly 10D-123.003, Amended 3-2-98, _____.

64E-18.004 Issuance of Certificates and Renewals.

(1) Upon receipt of the required fees, the department shall issue a certificate to each applicant who meets the requirements of Section 381.0101(5), F.S., and Rule 64E-18.003, F.A.C.

(2) All certificates expire on September 30th of odd numbered years.

(3) Certificates shall be renewed only after information has been provided to the department that the environmental health professional has successfully completed, within the previous 24-month period, 24 contact hours of continuing education relating to public health and environmental health principles for each program area in which they maintain certification. Contact hours will be prorated on a semi-annual basis. Such information shall be accompanied by necessary renewal fees and a completed DH Form 4101, Application for Renewal of Environmental Health Professional Certification, November 2004 ~~1997~~, incorporated by reference in this rule.

(4) An application for renewal must be postmarked on or before the close of business on September 30th of the expiration year of the certificate. If that date falls on a weekend or holiday, the date of expiration shall be the first working day after the expiration date on the certificate. If a certificate holder does not file a renewal application prior to the expiration date of the certificate, the certificate will revert to an inactive status ~~expire~~. A certificate can remain inactive no longer than 3 months at which time if not renewed it will expire. Environmental health professionals shall not provide services in a primary environmental health program with a revoked, suspended, inactive, or expired certificate.

(5) Those persons seeking certification under Section 381.0101(5)(a)2., F.S., must apply on DH Form 4100, Application for Environmental Health Professional Certification. The application must be completed in full and submitted to the department. Applications are available through the county health departments or online at http://www.doh.state.fl.us ~~the Bureau of Environmental Health Programs~~.

Specific Authority 381.0011, 381.0101(4),(5) FS. Law Implemented 381.0101 FS. History–New 9-21-94, Amended 8-20-96, Formerly 10D-123.004, Amended 3-2-98, _____.

64E-18.005 Notifications of Changes.

A certificate holder shall notify the department within 60 days of any change in name or address from that which appears on their current application ~~certificate~~.

Specific Authority 381.0011, 381.0101(4),(5) FS. Law Implemented 381.0101(5) FS. History–New 9-21-94, Formerly 10D-123.005, Amended _____.

64E-18.007 Standards of Practice.

(1) It shall be the responsibility of persons certified under this rule to see that work for which they are responsible and work which has been performed by them or under their supervision is carried out in conformance with the requirements of Chapters 500, 386, or 381, F.S., and Chapters 64E-6 or 64E-11, F.A.C., and all applicable policies and procedures.

(2) The following actions by a person included under this rule shall be deemed unethical and subject to penalties as set forth in Rule 64E-18.008, F.A.C.:

(a) Knowingly authorizing or approving the construction, installation, repair, use, or operation of a facility, structure, or device which does not meet environmental health or sanitary standards set forth in Chapters 500, 386, or 381, F.S., or Chapters 64E-6 or 64E-11, F.A.C., as they are applicable to the facility, the structure, or the device.

(b) Falsifying or providing written or verbal reports of inspections and evaluations which do not reflect the conditions observed or violations found at a site or within a facility.

(c) Allowing the continued existence of a sanitary nuisance without initiating efforts to obtain corrections.

(d) Directing a coworker or subordinate to violate rules and standards relating to the provision of environmental health services as set forth in Chapters 500, 386, or 381, F.S., or Chapters 64E-6 or 64E-11, F.A.C.

(e) Providing services in a primary environmental health program without prior certification ~~obtaining a certificate~~ from the department.

(f) Providing services with an expired or inactive certificate.

(g) Aiding or abetting evasion of Chapter 381, Chapter 489 Part III, Chapter 386, Chapter 500, F.S., or Chapter 64E-6 or Chapter 64E-11, F.A.C., promulgated thereunder.

(h) Obtaining certification through fraud, misrepresentation, or concealment of material facts.

(i) Gross negligence, incompetence, or misconduct which:

1. Causes no monetary or other harm to an individual or the public, or physical harm to any person.

2. Causes monetary or other harm to an individual or the public, or physical harm to any person.

(j) Use of improper procedures or methodology to perform work, or a violation of (1) above.

Specific Authority 381.0011, 381.0101(4),(5) FS. Law Implemented 381.0101(3),(4),(5),(8) FS. History–New 9-21-94, Amended 8-20-96, Formerly 10D-123.007, Amended 3-2-98, _____.

64E-18.008 Disciplinary Guidelines.

(1) The following guidelines shall be used in disciplinary cases, absent aggravating or mitigating circumstances and subject to other provisions of this rule. Where aggravating circumstances are present, the department shall be allowed to use the penalty for a repeat violation. Where mitigating circumstances are present, the department shall be allowed to use the penalty for first violation plus a fine not to exceed $500.

(a) Knowingly authorizing or approving the construction, modification, installation, repair, use, or operation of a facility, structure, or device which does not meet health and sanitary standards as set forth in Chapters 500, 386, or 381, F.S., or Chapters 64E-6 or 64E-11, F.A.C., as they are applicable to the facility, the structure, or the device. First violation, letter of warning; second violation, $250 fine; repeat violation, 90 day suspension.

(b) Falsifying or providing written or verbal reports of inspections or ~~and~~ evaluations which do not reflect the actual conditions observed or violations found at a site or within a facility. First violation, letter of warning; second violation, $250 fine; repeat violation, 30 day suspension.

(c) Allowing the continued existence of a sanitary nuisance without initiating efforts to obtain corrections. First violation, letter of warning; second violation, $250 fine; repeat violation, 30 day suspension.

(d) Directing a subordinate or coworker to violate rules and standards of the department relative to the provision of environmental health services as set forth in Chapters 500, 386, or 381, F.S., or Chapters 64E-6 or 64E-11, F.A.C. First violation, letter of warning; second violation, $250 fine; repeat violation, $500 fine and 90 day suspension.

(e) Providing primary environmental health services without obtaining prior certification from the department, offering to provide primary environmental health services without maintaining a current certification. First violation, letter of warning; second violation, $250 fine; repeat violation, $500 fine.

(f) Providing primary environmental health services with an expired or inactive certificate. First violation, letter of warning; second violation, $250 fine; repeat violation, $500 fine.

(g) Aiding or abetting evasion of Chapter 381, Chapter 386, Chapter 489 Part III, Chapter 500 F.S., Chapter 64E-6 or 64E-11, F.A.C., promulgated thereunder. First violation, letter of warning; second violation, $250 fine; repeat violation, $500 fine and 90 day suspension.

(h) Obtaining a certificate through fraud, misrepresentation, or concealment of material facts. Revocation.

(i) Gross negligence, incompetence, or misconduct which:

1. Causes no monetary or other harm to an individual or the public, or physical harm to any person. First violation, letter of warning; second violation, $250 fine; repeat violation, 30 day suspension.

2. Causes monetary or other harm to an individual or the public, or physical harm to any person. First violation, letter of warning; second violation, $250 fine; repeat violation, 30 day suspension.

(j) Use of improper procedures or methodology for perform work, or a violation of (1) above. First violation, letter of warning; second violation, $250 fine; repeat violation, $250 fine and 30 day suspension.

(2) Circumstances which will be considered for the purposes of mitigation or aggravation of a penalty shall include the following:

(a) Monetary or other damage to the public or an individual, in any way associated with the violation, which damage the certified professional has not relieved, as of the time the penalty is to be assessed.

(b) The severity of the offense as recommended by the Environmental Health Professional Advisory Board and approved by the Division of Environmental Health.

(c) The danger to the public.

(d) The number of repetitions of the offense.

(e) The number of complaints filed against the individual.

(f) The length of time the environmental health professional has practiced.

(g) The actual damage, physical or otherwise, to the individual or the public.

(h) Any efforts at rehabilitation.

(3) Where several of the above violations shall occur in one or several cases being considered together, the penalties shall normally be cumulative and consecutive.

(4) Probation shall be allowed to ~~may also~~ be assessed, by the Division of Environmental Health, in any case where it is in the interests of the public, to require the individual to serve a probationary period. Failure to comply with the terms and conditions of the probation shall be prima facie evidence of misconduct.

(5) The department shall require that persons who have been placed on probation take an exam administered by the department. Minimum passing score shall be 70 percent correct response to all questions comprising the exam. One retake within two working days shall be allowed. The examination must be passed before probation can be ended.

Specific Authority 381.0011, 381.0101(4),(5) FS. Law Implemented 381.0012, 381.0061(1), 381.0101(3),(4),(5),(8) FS. History–New 9-21-94, Amended 8-20-96, Formerly 10D-123.008, Amended 3-2-98, _____.

64E-18.0091 Grandfathering.

~~Persons employed in a primary area of environmental health prior to September 21, 1994, and formerly exempted are now considered certified in the program areas and levels at which they were previously exempted. If a person changes to another position type within a primary program area, any certification issued under this section in the primary program area is void within six months of such change and certification through examination must be obtained.~~

Specific Authority 381.0011, 381.0101(4),(5) FS. Law Implemented 381.0101(7) FS. History–New 3-2-98, Repealed _____.

64E-18.010 Fees.

(1) The following schedule of fees is hereby established. The fees listed below are required to accompany applications for certification, initial certificate issuance, application for certificate renewal, and application to renew an inactive certificate:

(a) Application for certification including transcript review if applicable, ~~initial~~ examination and certificate issuance.	$50 ~~25~~
~~(b) Initial certification.~~	~~$25~~
~~(c) Additional program certifications.~~	~~$10~~
(b)~~(d)~~ Renewal of certification per program per biennial period.	$25
(c) Late fee for renewal per program per biennial period.	$25

(2) The fee listed in paragraph (1)(b) is waived if the individual is certified by examination within 6 months of the renewal date ~~is for the biennial period, and shall be pro-rated to a half-period fee if certification is initially granted during the second year of the biennial period~~.

Specific Authority 381.0011, 381.0101(4),(5) FS. Law Implemented 381.0101(7) FS. History–New 9-21-94, Amended 8-20-96, Formerly 10D-123.011, Amended 3-2-98, _____.

Section II
Proposed Rules

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Aquaculture

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Comprehensive Shellfish Control Code	5L-1
RULE TITLES:	RULE NOS.:
Shellfish Harvesting Area Standards	5L-1.003
Container Identification, Terminal Sale Date; Prohibitions	5L-1.007

PURPOSE AND EFFECT: These amendments propose to reclassify the Horseshoe Beach shellfish harvesting area in Dixie County, the Cedar Key shellfish harvesting area in Levy County, the Waccasassa Bay shellfish harvesting area in Levy County, the Withlacoochee Bay shellfish harvesting area in Levy and Citrus Counties, the Boca Ciega Bay shellfish harvesting area in Pinellas and Hillsborough Counties, the Lower Tampa Bay shellfish harvesting area in Manatee and Hillsborough Counties, the Sarasota Bay shellfish harvesting area in Sarasota and Manatee Counties, and the Ten Thousand Islands shellfish harvesting area in Collier County. Sanitary surveys have been conducted that evaluate current information on pollution sources and bacteriological water quality, and recommend reclassification of the Horseshoe Beach, Cedar Key, Waccasassa Bay, Withlacoochee Bay, Boca Ciega Bay, Lower Tampa Bay, Sarasota Bay, and Ten Thousand Islands shellfish harvesting areas. Additionally, the four-digit area codes used on shellfish tags will be updated to identify the locations of where shellfish are harvested in the Horseshoe Beach, Lower Tampa Bay, and Sarasota Bay shellfish harvesting areas. The four-digit harvest area codes for Horseshoe Beach, Lower Tampa Bay, and Sarasota Bay are proposed to be updated to reflect the proposed classifications. These codes or the name of the harvest area must be recorded on harvester tags. This information provides for tracing shellfish that are implicated in illness outbreaks back to the harvest area.

SUMMARY: The proposed reclassification of the Horseshoe Beach shellfish harvesting area will decrease the size of the approved Summer area by 2,281 acres, from 92,209 acres to 89,928 acres, and will increase the size of the prohibited