

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

69K-5.0125 Minimum Records to be Maintained by Burial Rights Brokers; Inspection of Records.

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

(a) "Person" includes natural persons, corporations, limited liability companies, trusts, and partnerships.

(b) "Department" refers to the Florida Department of Financial Services.

(2) A Person involved in the sale or transfer of burial rights under Section 497.281, F.S., shall maintain the following records for each sale or transfer of a burial right:

(a) The name, address, and phone number of the person selling or transferring the burial right.

(b) The name, address, and phone number of the person acquiring the burial rights.

(c) The date of the sale or transfer.

(d) The price paid or to be paid for the sale or transfer of the burial rights.

(e) The total amount of compensation paid to the burial rights broker for the sale or transfer, with identification of who has paid the burial rights broker; that is, the acquirer, the seller, or other (named) person.

(f) The name and address of the cemetery where the burial space is located.

(g) A record identifying the type of burial rights: an in-ground interment space, a mausoleum, a columbarium, an ossuary, or a scattering garden.

(h) A record providing detailed identification of the specific location in the cemetery of the burial space, using location identification nomenclature in current use by the cemetery where the burial right is located.

1. Regarding in-ground interment spaces, such detailed identification shall include the name of the garden, lot, plot, and space number of the space.

2. Regarding interment spaces in a mausoleum or columbarium, such detailed identification shall include the unique name or number of the mausoleum or columbarium building or structure, and the location of the crypt or niche within that building or structure.

(i) A list of any merchandise or services that were sold or transferred with the burial rights, if any, including identification of any preneed contract that was transferred or sold.

(j) If the cemetery where the burial space is located requires a burial right transfer form, documentation that such a form has been filed, by whom, and on what date.

(k) If the cemetery where the burial space is located requires payment of a burial rights transfer fee, documentation that the burial rights transfer fee has been paid, by whom, and on what date.

(l) A copy of any written or printed agreement or agreements relating to the sale or transfer of the burial right.

(m) Copies of all correspondence to or from the burial rights broker regarding the sale or transfer of the burial right.

(n) The complaint log and related records required under Section 497.151, F.S.

(3)(a) The records required to be maintained by this rule shall be maintained at the burial rights broker's address identified on the most recent licensure application or renewal form under Section 497.281, F.S. The records shall be maintained in written or in electronic form. If the records are maintained in electronic form, the burial rights broker shall at all times have available at the same place where the records are maintained, all equipment and software needed to allow the immediate viewing of such records upon request by the Department's inspector.

(b) When a Person licensed under the provisions of Chapter 497, F.S., other than Section 497.281, F.S., engages in activity as a burial rights broker under Section 497.281, F.S., such Person shall maintain the records required by subsection (2) of this rule, at such Person's primary place of business in Florida.

(4) Records required to be maintained under this rule shall be kept until the later of the following dates:

(a) Five years after the date a final interment has occurred using the burial rights that were the subject of the sale or transfer;

(b) Twelve months after the most recent inspection of the records by the Department under this rule.

(5) The Department of Financial Services shall inspect the records of each burial rights broker at least once every two years.

Specific Authority 497.103(5)(b), 497.281 FS. Law Implemented 497.103(2)(a), 497.281 FS. History—New \_\_\_\_\_.

**Section II  
Proposed Rules**

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE NO.: 6A-1.09432  
 RULE TITLE: Assessment of English Language Learners

PURPOSE AND EFFECT: The proposed modification updates terminology to reflect current practice in the field, updates statutory references and modifies exemptions to statewide assessments for newly arrived English Language Learners.

SUMMARY: The rule is amended to correct references to "limited English proficient students" which have been changed to "English Language Learners." In addition, the rule is amended to allow only students who have been enrolled in

school in the United States for less than twelve months to be exempted from statewide assessment in reading, specify that such students must take the annual English language proficiency assessment, and clarify that students who are exempted may count against a school's participation rate in various accountability reports.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

SPECIFIC AUTHORITY: 1001.02(1), 1008.22, 1003.56 FS.

LAW IMPLEMENTED: 1003.56, 1008.22 FS.

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

DATE AND TIME: March 17, 2009, 8:30 a.m.

PLACE: Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399-0400

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Lori Rodriguez, Bureau of Student Achievement through Language Acquisition, Department of Education, 325 West Gaines Street, Room 501, Tallahassee, Florida 32399-0400, (850)245-0417

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-1.09432 Assessment of ~~Limited~~ English Language Learners ~~Proficient~~ Students.

(1) All students classified as English Language Learners (ELLs) ~~limited English proficient (LEP)~~ must participate in the statewide assessment program, prescribed in Section 1008.22 229.57, Florida Statutes. There is no categorical exemption from participation in the statewide assessment program for ELLs LEP students ~~except as provided in Rule 6A-6.0909, F.A.C.~~

(2) An exemption from participation in any component of the statewide assessment program for an individual English Language Learner LEP student ~~may only be made by specific action of an ELL LEP committee as defined in subsection 6A-6.0901(5), F.A.C., and only for a student whose date of classification as an English Language Learner LEP falls within one (1) year prior to the assessment date.~~

(a) The ELL LEP committee, in making its decision, shall consider the following factors:

1. Level of mastery of basic competencies or skills in English and home language according to appropriate local, state, and national criterion-referenced standards;
2. Grades from the current or previous years; or
3. Other test results.

(b) The ELL LEP committee shall exempt an English Language Learner LEP student ~~from participation in a component of the statewide assessment program if it determines that the student's participation would have an unsound instructional effect on the student.~~ Students exempted from a component of the statewide assessment program may be counted as non-participants for that component and may reduce the participation rate of assessed students in the school, district, and state and federal accountability reports.

(3) The use of ELL LEP assessment data for school grading purposes shall be as stated in Rule 6A-1.09981, F.A.C.

(4) ELL LEP assessment data shall be used by school districts and schools to evaluate the effectiveness of their instructional programs for English Language Learners LEP students and to follow-up such evaluations with appropriate adjustments, modifications, and improvements of the district's and the school's English for Speakers of Other Languages (ESOL) LEP programs. The district's ELL LEP plan submitted to the Department, pursuant to Sections 1003.56 and 1011.62, 233.058, Florida Statutes, and Rule 6A-6.0905, F.A.C., shall be revised whenever substantive changes in the district's ESOL LEP program are required.

(5) Assessment results of individual students shall be used by schools to evaluate the progress of individual students. When indicated, such evaluations shall result in appropriate adjustments, modifications, and improvements of each individual ELL LEP student plan, pursuant to Rules 6A-6.0901, 6A-6.0902, and 6A-6.0903, F.A.C. The ELL A LEP committee shall be convened whenever substantive changes in an individual ELL LEP student plan are required.

(6) No promotion or retention decision may be made for any individual student classified as an English Language Learner LEP based solely on a score on any single assessment instrument, whether such assessment instrument is part of the statewide assessment program or of a particular district's formal assessment process. A formal retention recommendation regarding an English Language Learner LEP student ~~may be made through action of an ELL LEP committee.~~

Specific Authority 1008.22, 232.245(2)(b) FS. Law Implemented 1003.56, 1008.22, 1008.25, 1008.34, 1011.62 232.245 FS. History—New 4-29-02, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Lori Rodriguez, Bureau of Student Achievement through Language Acquisition

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Eric J. Smith, Commissioner of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 16, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 14, 2008

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE NOS.:                   RULE TITLES:  
 6A-4.0244                   Specialization Requirements for the  
                                   Endorsement in English for  
                                   Speakers of Other Languages –  
                                   Academic Class  
  
 6A-4.02451                 Endorsement Competencies for the  
                                   Endorsement in English to  
                                   Speakers of Other Languages

PURPOSE AND EFFECT: The proposed modification deletes outdated “grandfathering” method of endorsement in ESOL and establishes competencies for ESOL endorsement.

SUMMARY: Rule 6A-4.02451, F.A.C., is created to adopt existing competencies for endorsement in ESOL into rule.

Rule 6A-4.0244, F.A.C. – Deletes outdated grandfathering provision as an alternative means to certification in ESOL.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

SPECIFIC AUTHORITY: 1001.02(1), 1012.55, 1012.56, 1012.575, 1003.56 FS.

LAW IMPLEMENTED: 1003.56, 1012.55, 1012.56, and 1012.575 FS.

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

DATE AND TIME: March 17, 2009, 8:30 a.m.

PLACE: Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399-0400

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Lori Rodriguez, Bureau of Student Achievement through Language Acquisition, Department of Education, 325 West Gaines Street, Room 501, Tallahassee, Florida 32399-0400, (850)245-0417

THE FULL TEXT OF THE PROPOSED RULES IS:

6A-4.0244 Specialization Requirements for the Endorsement in English for ~~to~~ Speakers of Other Languages – Academic Class.

~~(1) Plan One.~~

~~(1)(a)~~ A bachelor’s or higher degree with certification in another subject, and

~~(2)(b)~~ Fifteen (15) semester hours in English ~~for to~~ speakers of other languages (ESOL) to include credit in each of the areas specified below:

~~(a)1-~~ Methods of teaching English to speakers of other languages (ESOL),

~~(b)2-~~ ESOL curriculum and materials development,

~~(c)3-~~ Cross-cultural communication and understanding,

~~(d)4-~~ Applied linguistics, and

~~(e)5-~~ Testing and evaluation of ESOL.

~~(2) Plan Two.~~

~~(a) The endorsement in English to speakers of other languages will be added to a valid temporary or professional certificate when an individual completes the following:~~

~~1. Holds a valid Florida educator’s certificate with a coverage specified as appropriate in the 1989-90 Course Code Directory as adopted by reference in Rule 6A-1.09441, F.A.C., for teaching English to limited English proficient students.~~

~~2. Documents at least two (2) years of successful teaching of English to limited English proficient students using ESOL strategies. The successful teaching shall have been gained prior to July 1, 1990, and verified in writing by a Florida district school superintendent.~~

~~(b) The endorsement will be retained on the professional certificate when an individual completes three (3) semester hours of college credit or sixty (60) inservice points which are part of a district master plan for inservice education. The college credit or inservice points shall be completed for the first certificate renewal after July 1, 1990, and must be completed from the area(s) specified below:~~

~~1. Methods of teaching English to speakers of other languages (ESOL);~~

~~2. ESOL curriculum and materials development;~~

~~3. Cross-cultural communication and understanding;~~

~~4. Applied linguistics, and~~

~~5. Testing and evaluation of ESOL.~~

~~In the event the college credit or inservice points are not completed during the first renewal period, the endorsement will be deleted from the certificate.~~

Specific Authority 1001.02, 1012.55, 1012.56 FS. Law Implemented 1001.02, 1012.54, 1012.55, 1012.56 FS. History–New 10-10-89, Amended 10-30-90, 9-15-97, \_\_\_\_\_.

6A-4.02451 Performance Standards, Skills, and Competencies for the Endorsement in English for Speakers of Other Languages.

The competencies and indicators required for approval of educator preparation programs pursuant to Rule 6A-5.066, F.A.C., and for district in-service add-on programs pursuant to Section 1012.575, Florida Statutes, for the Endorsement in English for Speakers of Other Languages (ESOL), are contained in the publication, “English for Speakers of Other Languages (ESOL) Endorsement (Florida’s English for Speakers of Other Languages (ESOL) Performance Standards, Skills, and Competencies),” which is hereby incorporated by reference and made a part of this rule. These competencies are published on the Bureau of Student Achievement through Language Acquisition, Department of Education website at [www.fldoe.org/aala/perstand.asp](http://www.fldoe.org/aala/perstand.asp). Copies of this publication may also be obtained from the Bureau of Student Achievement

through Language Acquisition, K-12 Public Schools, Department of Education, 325 West Gaines Street, Room 501, Tallahassee, Florida 32399-0400.

Specific Authority 1012.55(1) FS. Law Implemented 1012.56, 1012.575 FS. History--New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Lori Rodriguez, Bureau of Student Achievement through Language Acquisition, Department of Education

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Eric J. Smith, Commissioner of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 27, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 14, 2008

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE NO.:	RULE TITLE:
6A-6.05271	Standards for the Use of Reasonable Force

PURPOSE AND EFFECT: The purpose of this proposed rule is to provide standards for the use of reasonable force by district school personnel. Section 1003.32, Florida Statutes, establishes that a teacher has the responsibility and authority for control of students and includes the use of reasonable force, according to the standards, to protect himself, herself or others from injury. The effect of the rule is to define to what extent force is considered reasonable and in what situations school personnel may use reasonable force, when necessary, to maintain a safe and orderly learning environment. The use of reasonable force is a generally applicable rule, and is not limited or directed to any specific student population.

SUMMARY: Standards for the use of reasonable force were developed and adopted by the State Board of Education in 1997. These standards were distributed to all public school district superintendents. These 1997 standards have stood as the generally applicable guidelines for school personnel to use in situations where reasonable force may be used to maintain a safe and orderly learning environment. Although the State Board adopted standards, these were never formally adopted as rule. Evaluation of the standards resulted in the determination the standards for the use of reasonable force should be updated and formally adopted as rule. Six rule development workshops were conducted throughout the state and included:

- March 17, 2008 – St. Petersburg College, Clearwater Campus, Teaching Auditorium;
- March 18, 2008 – Broward County Schools, Piper High School, Media Center, Sunrise, Florida;
- March 19, 2008 – Seminole County Schools, Educational Support Center, Sanford, Florida;

March 20, 2008 – St. Johns County Schools, Fullerwood Learning Center, St. Augustine, Florida;

March 21, 2008 – Jackson County Schools, Cottondale High School, Cottondale, Florida;

August 26, 2008 – Conference Call, Tallahassee, Florida  
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

SPECIFIC AUTHORITY: 1006.11(1), 1012.75(2) FS.

LAW IMPLEMENTED: 1003.32(1)(j), 1006.11(1), 1012.75(2) FS.

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

DATE AND TIME: March 17, 2009, 8:30 a.m.

PLACE: Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399-0400

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Marian W. Lambeth, Chief, Professional Practices Services, K-12 Public Schools, 325 West Gaines Street, Suite 224-E, Tallahassee, FL 32399-0100, (850)245-0438

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-6.05271 Standards for the Use of Reasonable Force.  
This rule implements Sections 1012.75 and 1006.11, Florida Statutes, outlining administrative standards for the use of reasonable force by school personnel to maintain a safe and orderly learning environment.

(1) Definition.

(a) Reasonable force is defined as the appropriate level or degree of physical force necessary to maintain a safe and orderly learning environment. Force shall not be used as an instrument for the educator’s anger or frustration or for routine classroom control. Reasonable force shall not be used in a way that unnecessarily embarrasses the student(s). Force shall not be used as the usual method of classroom management but may be used when necessary to maintain a safe and orderly learning environment. Positive interventions and alternatives to the use of reasonable force should be attempted if circumstances permit. The use of force shall cease upon restoration of a safe and orderly learning environment.

(b) Reasonable force shall not be excessive, disproportionate to the threatened harm, nor cruel or unusual in nature. Reasonable force may include the use of physical restraint. Physical restraint is defined as the use of force to restrict free movement of all or part of a student’s body. Reasonable force shall not restrict or obstruct a student’s

airway, impair breathing, nor twist or bend a limb or joint in an unnatural direction. Reasonable force shall only be used with consideration of the following:

1. Severity of the offense.
2. Size and abilities of all parties.
3. Known mental or psychological abilities of the student(s).
4. Known medical conditions or special needs of the student(s).
5. Patterns of behavior exhibited by the student(s).
6. Potential physical dangers in using force, and
7. Preventative or defusing action taken prior to the use of force.

(2) Circumstances for the use of reasonable force.

(a) The use of reasonable force is permitted, when necessary, in circumstances such as:

1. To quell a disturbance,
2. To obtain possession of a weapon or other dangerous object,
3. For self-defense,
4. To prevent harm or injury to the student's self or others,
5. To stop a crime in progress,
6. To prevent behavior disruptive to a safe and orderly classroom or school-related event, and
7. To remove a violent, abusive, uncontrollable or significantly disruptive student from the classroom or school-related event.

(b) Example situations that may permit the use of reasonable force include, but are not limited to:

1. When a student physically attacks, or threatens to attack, a staff member or another student,
2. When students are fighting,
3. When a student is causing, or at risk of causing, injury or damage by accident, rough play, or by misuse of dangerous materials, substances or objects,
4. When a student is seriously disrupting the order of the classroom or the school, or
5. When a student leaves or attempts to leave a class or school, if leaving puts the student at risk.

(3) School district documenting, reporting and training requirements.

(a) Documenting and reporting School personnel must document all incidents of the use of physical restraint and promptly report them to the school principal or building-level administrator. The principal, in coordination with the school staff member, shall notify the student's parent or guardian, by phone, on the same day of the incident, if possible. If attempts to reach the parent or guardian by phone are unsuccessful, the school shall notify the parents or guardians by email or in writing and document the attempts made to reach the parents or guardians. The documentation and notification to the parents or guardians of the incident shall include all of the following:

1. The date, time and description of the incident,
2. The school personnel involved in the incident,
3. The event that precipitated the use of physical restraint,
4. Any alternative measures used prior to the use of physical restraint, if applicable,
5. Any injury to the student, school personnel or property as a result of the incident, if known, and
6. The duration of time and a description of the restraint used.

(b) Dissemination and Training.

1. At the beginning of each school year, all school personnel shall be informed of the laws, rules, and district policies regarding the use of reasonable force.

2. Training on the use of reasonable force shall be required at least annually for appropriate staff assigned to students with disabilities. The district must determine appropriate staff as required under this subsection. At a minimum, training must include:

- a. Methods and procedures for de-escalation of problematic behaviors,
- b. Continuum of least to most restrictive techniques,
- c. Demonstrated proficiency of each technique in the continuum,
- d. Techniques for implementing reasonable force when using multiple staff members as a team,
- e. Monitoring and assessment criteria required during use of reasonable force,
- f. Identification of medical emergencies and basic response methods or techniques,
- g. Strategies to re-engage or re-enter the student into the learning environment, and
- h. The district's documentation and reporting requirements.

Specific Authority 1006.11(1), 1012.75(2) FS. Law Implemented 1003.32(1)(j), 1006.11(1), 1012.75(2) FS. History--New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dr. Frances Haithcock, Chancellor, K-12 Public Schools

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Eric J. Smith, Commissioner of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 27, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 29, 2008

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE NOS.:	RULE TITLES:
6A-6.0900	Programs for English Language Learners
6A-6.0901	Definitions Which Apply to Programs for English Language Learners
6A-6.0904	Equal Access to Appropriate Instruction for English Language Learners
6A-6.0905	Requirements for the District English Language Learners Plan
6A-6.0906	Monitoring of Programs for English Language Learners
6A-6.0907	Inservice Requirements for Personnel Serving English Language Learners
6A-6.0908	Equal Access for English Language Learners to Programs Other Than English for Speakers of Other Languages (ESOL)
6A-6.0909	Exemptions Provided to English Language Learners
6A-6.09091	Accommodations of the Statewide Assessment Program Instruments and Procedures for English Language Learners

**PURPOSE AND EFFECT:** The proposed modifications update terminology to reflect current practice in the field and update statutory references; modifies and/or creates inservice requirements for school personnel providing services to students enrolled in the ESOL program; incorporates newly revised template for District English Language Learners Plans; modifies exemptions to statewide assessments for newly arrived English Language Learners; and establishes competencies for ESOL endorsement. The effect is rules which are consistent with current practices.

**SUMMARY:** References to “limited English proficient students” are changed to “English Language Learners” throughout rules relating to ESOL programs. Other substantive changes include the following:

Rule 6A-6.0900 – adds three rules to the list of rules applicable to ESOL programs; reference to “ESOL/Home language programming” is changed to “ESOL/Home language instruction;” and reference to “categorical programming” is changed to “categorical programs and services.”

Rule 6A-6.0901 – definition of “English Language Learner” or “Limited English Proficient Student” is changed to conform with statutory definition; references to “individual” or “persons” are changed to “student” or “students,” where applicable.

Rule 6A-6.0904 – References to “programming” are changed to “instructional services;” where the Commissioner of Education was previously required to develop and identify standards for ESOL programs, the rule is amended to require the Commissioner to implement the standards. Examples of types of permissible ESOL instruction are deleted; references to “state curriculum frameworks and student performance standards” are updated to specify “Sunshine State Standards and English Language Proficiency Standards.”

Rule 6A-6.0905 – Adopts a new template for District English Language Learners Plans, replacing the old format, but maintaining prior substantive requirements. Clarifies that the Department of Education must consider Parent Leadership Council’s objections to district plans in the Department’s review of the plans.

Rule 6A-6.0906 – Updates or corrects rule and statutory citations. Eliminates references to statutes or programs no longer in existence. Deletes expired requirements relating to the state data system that occurred in 1991 and 1992.

Rule 6A-6.0907 – Deletes transition or grandfathering provisions relating to ESOL inservice training that no longer apply; specifies that certain inservice requirements do not apply to reading teachers; adopts existing requirement that a teacher obtaining ESOL certification through a subject area examination must obtain 120 hours of inservice in ESOL within 3 years and providing that reading certified teachers who pass the ESOL subject area examination have met the inservice requirement; adopts existing requirement that school guidance counselors and school administrators must complete 60 hours of inservice training in ESOL; provides for use of ESOL inservice training as credit towards certificate renewal requirements.

Rule 6A-6.0909 – modifies existing rules to allow only students who have been enrolled in school in the United States for less than twelve months to be exempted from statewide assessment in reading, and specifies that such students must take the annual English language proficiency assessment; deletes provisions for alternative assessments; clarifies that students who are exempted may count against a school’s participation rate in various accountability reports.

Rule 6A-6.09091 – deletes outdated reference to “High School Competency Test”

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** No Statement of Estimated Regulatory Cost was prepared.

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

**SPECIFIC AUTHORITY:** 1001.02(1), 1008.22, 1012.55, 1012.56, 1012.575, 1003.56 FS.

**LAW IMPLEMENTED:** 1003.56, 1008.22, 1012.55, 1012.56, 1012.575 FS.

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

DATE AND TIME: March 17, 2009, 8:30 a.m.

PLACE: Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399-0400

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Lori Rodriguez, Bureau of Student Achievement through Language Acquisition, Department of Education, 325 West Gaines Street, Room 501, Tallahassee, Florida 32399-0400, (850)245-0417

THE FULL TEXT OF THE PROPOSED RULES IS:

6A-6.0900 Programs for English Language Learners Limited English Proficient Students.

(1) The education of English Language Learners limited English proficient students is tailored to the student needs through design, scheduling, instructional strategies, philosophy, or learning activities; by the identification, assessment, and the classification process. Programs for English Language Learners limited English proficient students shall utilize either English for Speakers of Other Languages (ESOL) or home language instructional strategies in approach; provide courses leading to English language proficiency; ensure the student's identification and assessment, classification and reclassification; ensure access to appropriate ESOL/Home language instruction programming and to categorical programs and services programming; ensure qualified instructional personnel and monitoring for program compliance, equal access, and program effectiveness.

(2) The education and related services as described above shall be provided in accordance with the rules listed below:

(a) Rule 6A-6.0901, F.A.C., Definitions Which Apply to Programs for English Language Learners Limited English Proficient Students.

(b) Rule 6A-6.0902, F.A.C., Requirements for Identification, Eligibility Assessment and Programmatic and Annual Assessments of English Language Learners Limited English Proficient Students.

(c) Rule 6A-6.0903, F.A.C., Requirements for Classification, Reclassification, and Post Reclassification of English Language Learners.

(d) Rule 6A-6.0904, F.A.C., Equal Access to Appropriate Instruction for English Language Learners Programming for Limited English Proficient Students.

(e) Rule 6A-6.0905, F.A.C., Requirements for the District English Language Learners Limited English Proficient Plan.

(f) Rule 6A-6.0906, F.A.C., Monitoring of Programs for English Language Learners Limited English Proficient Students.

(g) Rule 6A-6.0907, F.A.C., Inservice Requirements for Personnel Serving English Language Learners of Limited English Proficient Students.

(h) Rule 6A-6.0908, F.A.C., Equal Access for English Language Learners Limited English Proficient Students to Programs Other Than English for Speakers of Other Languages (ESOL).

(i) Rule 6A-6.0909, F.A.C., Exemptions Provided to English Language Learners Limited English Proficient Students.

(j) Rule 6A-6.09091, F.A.C., Accommodations of the Statewide Assessment Program Instruments and Procedures for English Language Learners.

(k)(j) Rule 6A-4.0245, F.A.C., Specialization Requirements for Certification in English for Speakers of Other Languages (Grades K-12) – Academic Class.

(l) Rule 6A-4.02451, F.A.C., Performance Standards, Skills, and Competencies for the Endorsement in English for Speakers of Other Languages.

(m)(k) Rule 6A-1.0503, F.A.C., Definition of Qualified Instructional Personnel.

(n)(l) Rule 6A-4.0244, F.A.C., Specialization Requirements for the Endorsement in English to Speakers of Other Languages – Academic Class.

(o)(m) Rule 6A-1.09441, F.A.C., Requirements for Programs and Courses Which are Funded Through the Florida Education Finance Program and for Which the Student May Earn Credit Toward High School Graduation.

(p) Rule 6A-1.09432, F.A.C., Assessment of English Language Learners.

Specific Authority 1001.02 FS. Law Implemented 1003.56 FS., as amended by Section 150, Chapter 2002-387, Laws of Florida. History—New 10-30-90, Amended \_\_\_\_\_.

6A-6.0901 Definitions Which Apply to Programs for English Language Learners Limited English Proficient Students.

(1) English Language Learner means “Limited English Proficient Student,” as defined in Section 1003.56, Florida Statutes means a student whose home language is one other than English as determined by a home language survey and whose English aural comprehension, speaking, reading, or writing proficiency is below the average English proficiency level of English speaking students of the same age and grade.

(2) ELL LEP means English Language Learner limited English proficient.

(3) ESOL means English for Speakers of Other Languages.

(4) Home or native language, when used with reference to a student an individual of limited English proficiency, means the language normally used by such students individuals, or in the case of a student, the language normally used by the parents of the student.

(5) ~~ELL LEP~~ Committee means a group composed of ESOL teachers and home language teachers, and an administrator or designee plus guidance counselors, social workers, school psychologists or other educators as appropriate for the situation.

(6) ~~ELL LEP~~ student plan means a written document which contains the student's name, instruction by program, including programs other than the ESOL provided, amount of instructional time or the instructional schedule, the date the student's limited English proficiency is identified, and assessment data used to classify or reclassify the student as an English Language Learner limited English proficient, date of exit and assessment data used to exit students as English proficient. The plan may be included in or attached to an existing student plan, individual educational plan, or may be a separate document for a given student or students, provided; however, if for "students," an individual copy of the plan shall be maintained in each student's file.

(7) Basic ESOL means the teaching of English to students persons whose native language is other than English using the English language as the medium of instruction.

(8) Basic subject areas means instruction in computer literacy, mathematics, science and social studies.

(9) Other subject areas means instruction in courses other than basic ESOL and basic subject areas, such as music, physical education and vocational courses.

(10) Student supportive services means services provided by guidance counselors, psychologists, social workers, visiting teachers, occupational placement specialists, health service providers, school administrators, district level program coordinators, teachers as advisors, or parents.

Specific Authority 1001.02 FS. Law Implemented 1003.56 FS., as amended by Section 150, Chapter 2002-387, Laws of Florida. History—New 10-30-90, Amended \_\_\_\_\_.

6A-6.0904 Equal Access to Appropriate Instruction for English Language Learners Programming for Limited English Proficient Students.

(1) Each English Language Learner limited English proficient student shall be enrolled in programming appropriate for his or her level of English proficiency and academic potential. Appropriate programming includes enrollment in programs other than ESOL funded programs as provided in Rule 6A-6.0908, F.A.C. Such programs shall seek to develop each student's English language proficiency and academic potential.

(a) English Language Learners Limited English proficient students shall have equal access to appropriate programs which shall include state funded English for Speakers of Other Languages (ESOL) instruction and instruction in basic subject areas which are understandable to English Language Learners limited English proficient students and equal and comparable in amount, scope, sequence and quality to that provided to

English proficient students. Instructional services Programming shall be documented in the form of an English Language Learner Student Plan limited English proficient student plan.

(b) English Language Learners Limited English proficient students with special needs and in need of additional services shall be provided equal and comparable services to those provided to English proficient students on a timely basis and appropriate to their level of English proficiency.

(c) English Language Learners Limited English proficient students who, by the end of grade 12 fail to meet the 10th grade statewide assessment, shall be provided appropriate programming as specified in Rule 6A-6.0909, F.A.C.

(d) English Language Learners Limited English proficient students shall be given credit toward fulfilling graduation requirements in English for each basic ESOL course completed satisfactorily. Credit shall be given toward fulfilling graduation requirements for each basic subject area course completed satisfactorily through ESOL or home language.

(2) Basic ESOL instruction.

(a) Basic ESOL programs shall include instruction to develop sufficient skills in speaking, listening, reading and writing English to enable the student to be English proficient.

(b) English Language Learners Limited English proficient students shall be classified according to their levels of English language proficiency, academic achievement, and special needs, and shall be placed in programming appropriate instructional services for these levels. Basic ESOL instruction may be provided in heterogeneous classroom settings, such as multiple language groups.

(c) An English Language Learner limited English proficient student shall be provided basic ESOL programming for the minimum number of hours per day or week, as specified in the individual ELL limited English proficient student plan. Such plans shall specify that each student receive, at minimum, the amount of basic ESOL instruction which may include special or alternative language arts necessary to attain parity of participation with non-limited English proficient students in language arts. The English Language Learner limited English proficient student shall not receive less than the total amount of instruction received by an non-limited English proficient student at the same grade level.

(d) Basic ESOL services shall seek to prepare students for reclassification as soon as the student has attained a sufficient level of English language proficiency and academic achievement according to the entry and exit standards set forth in Rules 6A-6.0902 and 6A-6.0903, F.A.C.

(e) An English Language Learner's student's ESOL teacher, parent or parent's designee, or other school personnel may request the convening of an ELL LEP Committee at any time after the end of the student's first semester in the program to identify any special problems which may be hindering a student's progress in ESOL. An ELL LEP Committee shall



make appropriate recommendations, as necessary, for the modification of the student's ELL Student LEP Plan. The nature and basis of such modification, if any, shall be documented in each ELL Student student's LEP Plan.

(f) The Commissioner of Education shall develop and implement ~~or identify~~ standards and criteria for evaluating the appropriateness of basic ESOL instruction in each district. These standards shall be consistent with state-required curriculum frameworks and student performance standards.

(g) Basic ESOL instruction shall be provided by appropriately qualified personnel.

(3) ESOL instructional and home language instructional strategies in basic subject areas.

(a) School districts shall provide appropriate home language instruction or ESOL content instruction or a combination of the two in basic subject areas in addition to basic ESOL instruction. ~~Examples of appropriate ESOL instruction in basic subject areas include "ESOL content," "sheltered," "structured" and similar ESOL strategies.~~

(b) School districts are encouraged to use grouping, clustering, and transporting of students where practical and feasible within and between districts to achieve compliance with these standards.

(4) ESOL instruction in basic subject areas.

(a) A district that provides instruction, in whole or in part, through ESOL strategies shall assure and be able to document that:

1. Each course has been structured in conformity with ESOL strategies for teaching English Language Learners ~~limited English proficient students~~ basic subject matter;

2. Each course is taught by qualified personnel and that appropriate instructional materials are available to such personnel; and

3. English Language Learners ~~Limited English proficient students~~ are learning and progressing towards completion of requirements as specified in the school district's Student Progression Plan ~~pupil progression plan~~.

(b) The focus of instruction shall be substantive subject matter knowledge parallel and comparable to that provided to ~~non-limited~~ English proficient students in basic subject areas, consistent with the Sunshine State Standards as incorporated by reference in Rule 6A-1.09401, F.A.C., and English Language Proficiency Standards consistent with Rule 6A-6.0903, F.A.C. ~~state curriculum frameworks, and student performance standards.~~

(c) English Language Learners ~~Limited English proficient students~~ in ESOL basic subject area classrooms shall have access to an individual proficient in their languages in addition to a trained ESOL subject area teacher. Schools with at least fifteen students speaking the same home language shall provide at least one aide or teacher who is proficient in the same home language and who is trained to assist in ESOL basic subject area instruction.

(d) The Commissioner of Education shall develop or identify standards and criteria for evaluating the appropriateness of the ESOL instruction in basic subject areas.

(5) Home language instruction in basic subject areas.

(a) A district that provides instruction, in whole or in part, through home language instruction shall assure and be able to document that:

1. Each course has been structured in conformity with bilingual strategies for teaching English Language Learners ~~limited English proficient students~~ basic subject matter;

2. Each course is taught by qualified personnel and that appropriate instructional materials are available to such personnel; and

3. English Language Learners ~~Limited English proficient students~~ are learning and progressing towards completion of requirements as specified in the district's Student Progression Plan ~~pupil progression plan~~.

(b) The focus of instruction shall be substantive subject matter knowledge parallel and comparable to that provided to ~~non-limited~~ English proficient students in basic subjects, consistent with the Sunshine State Standards and English Language Proficiency Standards ~~state curriculum frameworks, and student performance standards~~. Such instruction shall incorporate appropriate instructional materials and comparable home language texts when available.

(c) The Commissioner of Education shall develop or identify standards and criteria for evaluating the appropriateness of the home language instruction in basic subject areas.

(6) Interim measures.

(a) English Language Learners ~~Limited English proficient students~~ shall receive an instructional program which includes basic ESOL instruction and understandable instruction in basic subject areas.

(b) In recognition that appropriately trained personnel might not be available to each student to provide each component, an action plan shall be developed at each school and for each district setting forth the following:

1. The number of students by language group who are denied any one or more of the programming required herein;

2. The documentation of the district's efforts and lack of success in recruiting, hiring, or training appropriately qualified staff for such programs;

3. Specific activities and timelines for recruiting, hiring and training needed staff; and

4. A plan of interim measures which must include inservice training programs, utilization of native speaking aides, active language materials and other elements designed to assure that each student's English language barrier is addressed in an instructionally sound manner.

(7) Parental involvement.

(a) Parental involvement and participation in English Language Learners' limited English proficient students' educational programming and academic achievement shall be promoted, among other ways, by establishing parent leadership councils at each school, or at the district level, composed in the majority of parents of English Language Learners limited English proficient students.

1. Parent leadership council should be promoted.

2. Parents shall be provided training and orientation regarding program monitoring procedures and involvement procedures available to parents of English Language Learners limited English proficient students.

(b) Parents shall be informed of the opportunity to be represented on existing school and district advisory committees.

(c) Parents shall be notified in writing of the student's initial membership in an assigned program. Notification shall be in language that the parent understands, unless clearly not feasible.

Specific Authority 1001.02 FS. Law Implemented 1003.56 FS.; as amended by Section 150, Chapter 2002-387, Laws of Florida. History—New 10-30-90, Amended \_\_\_\_\_.

6A-6.0905 Requirements for the District English Language Learners Limited English Proficient Plan.

(1) Each school district shall submit a school district ELL LEP plan to the Department of Education describing the district's proposed procedures and methodologies for serving limited English proficient students and must receive the Commissioner of Education's approval prior to program implementation.

(2) Councils representing parents of ELLs limited English proficient students shall be consulted prior to the submission of the school district ELL LEP plans to the Department of Education. The Department of Education shall consider the councils' objections to plan approval in its review.

(3) The Department of Education shall review the school district ELL LEP plan and approve, disapprove, or return for clarification or further elaboration within sixty days of submission.

(4) A school district ELL LEP plan shall be updated and resubmitted every three years. Interim changes in the plans shall be submitted as amendments to the Department of Education and must be approved by the Commissioner prior to implementation.

(5) School district ELL LEP plan format. The school district LEP plan shall include at least the following information:

(a) A district's ELL plan shall include: standards for entry, exit and post-reclassification monitoring; a description of instructional, categorical and student services; provisions for and plans to employ qualified staff; and evidence of

consultation with the district's Parent Leadership Council or other parent advisory body representative of parents of ELL students.

(b) The school district ELL plan shall be submitted to the Department utilizing the Department's online template entitled, "District Plan for Services of English Language Learners," which is hereby incorporated by reference to become a part of this rule. Copies of this template may be obtained from the Bureau of Student Achievement through Language Acquisition, K-12 Public Schools, Department of Education, 325 West Gaines Street, Room 501, Tallahassee, Florida 32399-0400. The online template must be completed in its entirety.

(a) Introduction:

1. A description of the school district's philosophy of limited English proficient programs, which shall include information on the district and school level procedures and methodologies, the number of students, identification of languages involved and strategies intended to provide equal educational opportunities to limited English proficient students.

2. An overview of the school district's LEP plan that summarizes the contents of the plan and specifies appropriate programming.

(b) General section:

1. A general section to include descriptions of district strategies regarding:

a. Standards for entry, exit and post-reclassification monitoring including test and scores to be used;

b. Instructional categorical and student services such as counseling; and

c. Statement of procedures to employ qualified staff, including procedures used to monitor the oral language proficiency of teachers of limited English proficient students in math, science, social studies or computer literacy courses in limited English proficient student's home language using criteria specified in Rule 6A-6.0904, F.A.C., as well as, all relevant provisions.

2. A summary of evidence of consultation with the district's parent leadership council composed of parents of limited English proficient students or other parent advisory body representative of parents of limited English proficient students; and

3. Interim measures for providing instructional services to limited English proficient students when appropriate personnel are not available to provide basic ESOL instruction and understandable instruction in basic subject areas as set forth in Rule 6A-6.0904, F.A.C. Measures shall be developed at each school.

(6) A school district LEP plan shall incorporate home language instruction in basic subject areas such as transitional or development bilingual education or ESOL instruction in basic subject areas, such as "structured" or "sheltered"

instructional strategies, in addition to basic ESOL instruction. The plan shall describe how the district intends to provide each limited English proficient student with the opportunity to learn the academic English subject matter vocabulary necessary for academic success.

(a) ~~The school district shall specify how it will meet the needs of students in the home language using teachers, aides, parents, volunteers and students proficient in the language.~~

(b) ~~The school district LEP plan shall include a statement of assurance for compliance with Federal and state laws and regulations.~~

(c) ~~The school district LEP plan shall include a statement which addresses credit towards graduation requirements for basic ESOL courses and ESOL and home language basic subject areas courses.~~

Specific Authority 1001.02 FS. Law Implemented 1003.56 FS., as amended by Section 150, Chapter 2002-387, Laws of Florida. History--New 10-30-90, Amended \_\_\_\_\_.

6A-6.0906 Monitoring of Programs for English Language Learners Limited English Proficient Students.

The Florida Department of Education shall monitor districts to ensure compliance with Rules 6A-6.0900 through 6A-6.0909~~1~~, and 6A-1.0943~~2~~, F.A.C., and all applicable federal and state laws and regulations including Sections 1000.05, 1001.03, 1002.20, 1003.56 and 1010.305, F.S. Monitoring shall include periodic reviews of the following areas:

(1) Program compliance.

(a) Monitoring shall be in conjunction with and reports shall be consistent with the comprehensive monitoring system of the Division of Public Schools in accordance with Rule 6A-1.0453, F.A.C.

(b) Compliance shall be determined and documented in the following areas:

1. Identification, assessment and programmatic assessment of English Language Learners limited English proficient students as defined in Rule 6A-6.0902, F.A.C.;

2. Provision for and implementation of basic ESOL instruction, ESOL instruction in basic subject areas, or home language instruction in basic subject areas as defined in Rule 6A-6.0904, F.A.C.;

3. Employment of qualified personnel as defined or addressed in Rules 6A-1.0503, 6A-4.0244, 6A-4.0245, 6A-6.0907, and 6A-1.09441, F.A.C.; and

4. Parental involvement as defined in Rule 6A-6.0904, F.A.C.

(c) When applicable, compliance with the following categorical program and supportive service area requirements as provided in law and rule:

1. Compensatory or remedial education;
2. Exceptional student education;
3. Dropout prevention;
4. Pre-kindergarten;

~~5. Chapter 2;~~

~~5.6. Pre-first grade classes;~~

~~6.7. Career and Technical Education Vocational;~~

~~7.8. Adult;~~

~~8.9. Student services; and~~

~~9.10. Extended day.~~

(d) Periodic reviews of local district compliance with the Florida Educational Equity Act shall include a review of requirements in Chapter 6A-19, F.A.C., with regard to equal access to categorical programming for eligible national minority students. Reviews will be conducted in accordance with Rules 6A-19.010 and 6A-1.0453, F.A.C.

(e) Data shall be collected annually for all students by the school district and the Department of Education in the following areas:

1. Student's home language,
2. Student's national origin, and
3. Student classified as English Language Learner limited English proficient.

(f) Data shall be collected annually for English Language Learners limited English proficient students by the school district and the Department of Education in the following areas:

1. Student classified as English proficient,
2. Student reclassified as English Language Learner limited English proficient,
3. Student reclassified as English Language Learner limited English proficient but not receiving programming as required in Rule 6A-6.0904, F.A.C.,
4. Student in Title I Chapter I Programs or other federal programs,
5. Student passing the statewide assessment competency test,
6. Student not passing the statewide assessment competency test,
7. Student in compensatory or remedial education programs,
8. Student in exceptional student education program,
9. Student in dropout prevention program, and
10. Student in prekindergarten program, and
- ~~11. Student in Chapter II Program.~~

(2) Program effectiveness evaluation.

(a) The Department of Education shall design and implement an evaluation system containing output measures by October 1, 1991. The state data system shall be amended to include needed data items between October 1, 1991, and June 30, 1992. The evaluation shall be implemented in the 1992-93 school year.

(b) The goals of program effectiveness evaluations are to more effectively measure outcomes and to substitute, where appropriate, outcome measures for measures contained elsewhere in rules.

(c) The Department of Education shall conduct an equal access data review of all school districts within a three year period in order to ascertain any major deviance from expected data patterns. Where deviations are noted, the school district shall be informed and shall be required to address the issue and report action taken. The district profiles shall include a comparison of (1) national origin minority students, (2) students who are not national origin minorities, and (3) English Language Learners ~~limited English proficient students~~ on the following indicators such as participation in categorical programs, participation in special programs in the Florida Education Finance Program, and participation in targeted academic courses.

(d) Data shall be analyzed to determine program effectiveness in such areas as, but not limited to:

1. Acquisition of English language skills by English Language Learners ~~limited English proficient students~~ sufficient for parity of participation with ~~non-limited~~ English proficient students within a reasonable period of time;
2. Progression toward completion of requirements specified in each district's student progression plan ~~pupil progression plan~~ as evidenced by a comparison of English Language Learner ~~limited English~~ and ~~non-limited~~ English proficient speaking students;
3. Comparison of English Language Learner ~~limited English~~ and ~~non-limited~~ English proficient speaking students by race/ethnic, national origin and district by the data identified in this subsection; and
4. Comparison of student identification and student exit data from ESOL programs of English Language Learners ~~limited English proficient students~~ and by home language by district and state.

(e) Data shall be collected annually for all students by school district and the Department of Education in the following areas:

1. Retention rates,
2. Graduation rates,
3. Dropout rates,
4. Grade point average,
5. State assessment test scores, and
6. Students classified as English Language Learners ~~LEP~~ exiting the ESOL program by home language by year.

(3) Monitoring procedures.

(a) The Department of Education shall develop annually a summary report of the results of the monitoring review or the program evaluation.

(b) Each district shall retain documentation to verify compliance with the requirements of law and rules applicable to programs for English Language Learners ~~limited English proficient students~~.

(c) The Department of Education shall prepare and distribute to the school district a report of findings and recommendations or corrective actions on monitoring compliance or effectiveness evaluation. Copies of all reports shall be retained in the individual districts as well as by the Department.

(d) The Department of Education monitoring activities shall be planned and undertaken with appropriate consultation and participation of councils representing parents of English Language Learners ~~limited English proficient students~~. Each district shall be responsible for making a copy of any monitoring report available to councils representing parents of English Language Learners ~~limited English proficient students~~.

(e) The Department of Education shall designate employees to provide technical assistance to those school districts which data suggest that inadequate or inappropriate services are being provided to English Language Learners ~~limited English proficient students~~. Such technical assistance shall include:

1. Joint determination of practices to be investigated by the local school district,
2. Involvement of the parents of English Language Learners ~~limited English proficient parent group~~ and school district personnel in determining actions to improve the situation, and
3. A summary report to the Division of Public Schools. The data for school districts receiving technical assistance as described above shall be reviewed the following year to identify the impact of any changes made.

(f) Any documented major deviation from expected data patterns or compliance criteria shall require that the district submit to the Department of Education a written explanation of the situation and any action taken.

(g) Technical assistance shall be made available to any district with data which indicates that inadequate or inappropriate services are being provided to English Language Learners ~~limited English proficient students~~.

(h) Districts shall be subject to the procedures and sanctions as set forth in Section 1001.03, F.S.

Specific Authority 1001.02 FS. Law Implemented 1000.05, 1003.56 FS., as amended by Chapter 2002-387, Laws of Florida. History--New 10-30-90, Amended \_\_\_\_\_.

6A-6.0907 Inservice Requirements for Personnel Serving English Language Learners ~~of Limited English Proficient Students~~.

(1) Inservice standards for teachers of mathematics, science, social studies, or computer literacy using ESOL instructional strategies who do not hold a valid certificate with ESOL endorsement or coverage:

(a) Any teacher using ESOL strategies to teach mathematics, science, social studies, or computer literacy assigned to instruct English Language Learners ~~limited English~~

proficient students on September 15, 1990, or for the first time in any given school year thereafter shall complete at least sixty points of inservice training or three semester hours of college credit in methods of teaching English to speakers of other languages, ESOL curriculum and materials development, cross-cultural communications and understanding, or testing and evaluation of ESOL by September 15 of the following year, ~~or~~

~~(b) Teachers who had appropriate certification as specified in the 1989-90 Course Code Directory as adopted by reference in Rule 6A-1.09441, F.A.C., for the subjects and grades taught and have completed prior to the 1990-91 school year, at least two years of successful teaching using ESOL strategies to teach math, science, social studies or computer literacy to limited-English proficient students as verified in writing by the superintendent, shall complete sixty points of inservice training or three semester hours in methods of teaching English to speakers of other languages, ESOL curriculum and materials development, cross-cultural communications and understanding or testing and evaluation of ESOL. The sixty points of inservice training or the three semester hours of college credit shall be completed for the first certificate renewal after July 1, 1990. The school district shall maintain records on how the teacher was evaluated as successful. The experience in a basic subject area ESOL class, acceptable as provided herein, shall have been taught using ESOL strategies.~~

~~(b)(e) Inservice points or college credit earned in fulfillment of this subsection may be used toward meeting three of the six semester hours renewal requirements for current or subsequent that validity periods.~~

(2) Inservice standards for teachers of mathematics, science, social studies, or computer literacy using home language instructional strategies who do not hold a valid certificate with ESOL endorsement or coverage:

(a) Any teachers using home language strategies to teach mathematics, science, social studies or computer literacy assigned to instruct English Language Learners limited-English proficient students on September 15, 1990, or for the first time in any given school year thereafter shall complete at least sixty points of inservice training or three semester hours of college credit in methods of teaching home language, home language curriculum and materials development, or testing and evaluation in the home language by September 15 of the following year, ~~or~~

~~(b) Teachers who had appropriate certification as specified in the 1989-90 Course Code Directory as adopted by reference in Rule 6A-1.09411, F.A.C., for the subject and grades taught and have completed, prior to the 1990-91 school year, at least two years of successful teaching of math, science, social studies or computer literacy through the home language strategies, as verified in writing by the superintendent, shall complete sixty points of inservice training or three semester hours of college credit in methods of teaching home language,~~

~~home language curriculum and materials development, or testing and evaluation in the home language. The sixty points of inservice training or three semester hours of college credit shall be completed for the first certificate renewal after July 1, 1990. The school district shall maintain records on how the teacher was evaluated as being successful. The experience in a basic subject area class acceptable as provided herein shall have been taught using home language strategies.~~

~~(b)(e) Inservice points or credit earned in fulfillment of this subsection may be used toward meeting three of the six semester hours renewal requirements for current or subsequent that validity periods.~~

~~(c)(d) Teachers who are instructing English Language Learners limited-English proficient students in mathematics, science, social studies, or computer literacy in the student's home language on September 15 of any given school year shall have met by September 15 of the subsequent year the following:~~

1. A passing grade on a Department-approved language examination designed to determine whether a person has a language proficiency necessary to teach elementary or secondary students in that language. ~~The Florida Department of Education shall develop by October 1, 1990, a list of approved tests. A district which wishes to use an alternative examination shall submit it to the Florida Department of Education for approval prior to its utilization, or~~

2. A Florida foreign language certification coverage in the language which the teacher will utilize to instruct English Language Learners limited-English proficient students.

(3) Inservice standards for teachers of English Language Learners limited-English proficient students in subjects other than English, reading, mathematics, science, social studies or computer literacy who do did not hold a valid certificate with ESOL endorsement or coverage:

(a) Any teacher assigned to instruct English Language Learners limited-English proficient students in subjects other than English, reading, mathematics, science, social studies or computer literacy on September 15, 1990, ~~or~~ for the first time in any given school year thereafter shall complete at least eighteen points of inservice training or three semester hours of college credit methods of teaching English to speakers of other languages, ESOL curriculum and materials development, cross-cultural communications and understanding, or testing and evaluation of ESOL by September 15 of the following year. Inservice training shall be provided during three full planning days or by other means approved in the district's ELL LEP plan, ~~or~~

~~(b) Teachers who had appropriate certification as specified in the 1989-90 Course Code Directory as adopted by reference in Rule 6A-1.09441, F.A.C., for the subject(s) and grades taught and have completed, prior to the 1990-91 school year, at least one year of successful teaching of other subject areas, to limited-English proficient students, as verified in writing by the~~

superintendent, shall complete sixty hours of inservice training or three semester hours of college credit in methods of teaching English to speakers of other languages, ESOL curriculum and materials development, cross-cultural communications and understanding, or testing and evaluation of ESOL. The sixty hours of inservice training or three semester hours of college credit shall be completed for the first certificate renewal after July 1, 1990. The school district shall maintain records on how the teacher was evaluated as being successful.

~~(b)(e)~~ Inservice points or college credit earned in fulfillment of this subsection may be used toward meeting three of six semester hours renewal requirement for current or subsequent ~~that~~ validity periods.

(4) Any teacher that obtains K-12 ESOL Coverage based solely on passing score on the ESOL Subject Area test shall complete 120 inservice points or 6 semester hours of college credit in ESOL within three (3) calendar years of receiving the certification coverage. Any ESOL inservice training or college credit in ESOL taken prior to certification may be used to meet this requirement. Any teacher who has Reading K-12 Certification or the Reading Endorsement shall be credited with having completed 120 hours of inservice training in ESOL for this purpose, and shall have satisfied this requirement.

(5) School administrators and guidance counselors shall complete sixty (60) points of inservice training or three (3) semester hours of college credit in English for Speakers of Other Languages, ESOL Curriculum and Materials Development, Cross-cultural Communications and Understanding, or Testing and Evaluation of ESOL within three (3) years of their hiring date or assignment as a school administrator or guidance counselor. ESOL inservice training or college credit in ESOL taken prior to the hiring date or assignment may be used to meet this requirement.

~~(6)(4) Implementation schedule for this rule.~~

~~(a) Principles of Implementation.~~

~~(a)1-~~ Except as set forth in this subsection, any teacher required to have an endorsement or training pursuant to this rule shall complete such training within one year of his or her initial assignment.

~~(b)2-~~ Exceptions to paragraph (6)(a) subsection (4) of this rule.

~~1.a-~~ A beginning teacher shall complete the inservice requirements within two years of initial assignment.

~~2.b-~~ A teacher required to have an ESOL endorsement on a certificate pursuant to this rule shall complete course work required for such endorsement in accordance with Rule 6A-1.0503, F.A.C ~~within three calendar years of his or her initial assignment.~~

~~(b) Interim measures. In recognition that this rule will require large numbers of teachers to be trained for the first time and that this poses a burden for school districts, the following interim measures will be in effect until 1993-94, except as specified herein:~~

~~1. During the 1990-91 school year, the following steps shall be taken to provide for a phase in of the requirements of this rule:~~

~~a. Each school district shall conduct a survey of its limited English proficient students and based on the survey shall determine the number of teachers by school who need to be trained under this rule. Such survey will be completed by February, 1991.~~

~~b. Each school district shall establish a program to assure that all ESOL basic teachers needing training shall initiate training by the beginning of the 1991-92 school year and shall complete such training by the beginning of the 1994-95 school year.~~

~~e. Each school district shall project the number of ESOL subject matter teachers and home language basic subject matter teachers needed by the district and shall initiate a program which will assure that the grouping of teachers with the largest number shall begin training by the beginning of the 1991-92 school year and complete such training by the beginning of the 1993-94 school year and that the grouping of teachers with the lesser number shall begin training by the beginning of the 1991-92 school year and complete such training by the beginning of the 1994-95 school year.~~

~~d. Each school district shall also develop and implement a training and informational program for administrators, including principals, concerning this rule and the educational needs of limited English proficient students.~~

~~2. Beginning in the 1991-92 school year those teachers requiring inservice training pursuant to rule shall complete such training within a school year. Each year thereafter those teachers who have not already completed the training shall complete the requisite training.~~

~~3. Those teachers who must complete specified credit or inservice points for certification renewal pursuant to this rule shall complete such training by the following time periods: Those whose validity period ends prior to July 1, 1993, shall complete requirements by June 1992; those whose validity period ends July 1, 1994, shall complete requirements by June 1993; those whose validity period ends July 1, 1995, shall complete requirements by June 1994.~~

~~(7)(5) Inservice training program standards. Programs set forth herein which enable teachers to meet requirements through inservice points shall meet the following standards:~~

~~(a) The inservice time shall be divided between contact time and supervised practicum.~~

~~(b) The inservice training time allotted for methods of teaching English to speakers of other languages, ESOL curriculum and materials development, cross-cultural~~

communications and understanding, and testing and evaluation of ESOL as set forth in subsections (1), ~~and (3), and (5)~~ of this rule shall be appropriately divided, or

(c) The inservice training time allotted for methods of teaching home language, home language curriculum and materials development, and testing and evaluation in the home language as set forth in subsection (2) of this rule shall be appropriately divided.

(d) A set of performance competencies with post-tests shall be developed by each district in their master inservice plan for all the inservice training provided in fulfillment of this rule.

(e) Trainers of home language teachers, where possible, shall be persons who speak the targeted home language.

(f) Each inservice program developed to meet the requirements of this rule shall be approved by the Florida Department of Education and shall be monitored at least once every three years to assure that the standards set forth herein are met.

(g) Up to one hundred twenty (120) sixty inservice points or six (6) three semester hours earned in meeting the requirements as specified in subsections (1)-(5) (1), (2) or (3), F.A.C. of this rule may be used by a teacher for certificate renewal. A teacher who holds a professional certificate may use college credits or inservice points completed in ESOL training and training in the teaching of reading in excess of six (6) semester hours during one certificate-validity period toward renewal of the professional certificate during the subsequent validity periods. A teacher who holds a temporary certificate may use college credits or inservice points completed in ESOL training and training in the teaching of reading toward renewal of the teacher's first professional certificate. Such training must not have been included within the degree program, and the teacher's temporary and professional certificates must be issued for consecutive school years.

(h) Each district shall retain records for each teacher, school administrator, guidance counselor, and paraprofessional ~~and aide~~ that successfully completed the inservice requirements.

~~(8)(6)~~ Each school district shall develop and implement an inservice program for paraprofessionals teacher aides who work with English Language Learners limited English proficient students.

~~(9)(7)~~ Each school district shall develop and implement the inservice requirements contained in this rule in the district's master inservice plan.

~~(10)(8)~~ Each district shall develop and implement training components, in addition to the requirements in this rule, needed to increase the effectiveness and efficiency of the program(s) provided to English Language Learners limited English proficient students.

~~(11)(9)~~ The Department of Education shall provide technical assistance, including technological assistance where feasible, to school districts in the implementation of the inservice training.

~~(10) During the 1992-93 school year, the Department of Education shall conduct an evaluation of the system of inservice provided in this rule, and shall make recommendations for revising the system based on analysis of student outcome measures.~~

Specific Authority 1001.02 FS. Law Implemented 1003.56 FS., as amended by Chapter 2002-387, Laws of Florida. History—New 10-30-90, Amended \_\_\_\_\_.

6A-6.0908 Equal Access for English Language Learners Limited English Proficient Students to Programs Other Than English for Speakers of Other Languages (ESOL).

(1) English Language Learners (ELL) Limited English proficient students, including refugees and other immigrants, racial and national origin minority students, shall be entitled to equal access to programs and services other than ESOL, such as, but not limited to compensatory, exceptional, early childhood, pre-first grade, vocational, adult education, ~~Chapter 2~~, dropout prevention, extended day, and supportive services regardless of the funding sources.

(2) School-to-Home Communication Home school communication. All written and oral communication between a school district's personnel and parents of current or former English Language Learners limited English proficient students shall be in the parents' primary language or other mode of communication commonly used by the parents unless clearly not feasible.

(3) National origin minority or English Language Learners limited English proficient students shall not be subjected to any disciplinary action because of their use of a language other than English.

(4) Any person or organization may file a complaint alleging violation of Rules 6A-6.0900 through 6A-6.0909, F.A.C., with the Florida Department of Education.

(a) Complaints shall be specific and in writing.

(b) Findings shall be reported to the district and complainant within sixty days after receipt of the complaint.

(c) Corrective actions shall be required for any confirmed violation.

(d) The complaint process is independent of an individual's rights under state and federal laws.

(5) Exceptional student education referral. The school district shall ensure that an exceptional student referred for placement into programs for English Language Learners limited English proficient students shall have an individual educational plan; (IEP); review prior to that placement. A staff representative of the ELL LEP Committee shall be invited to participate in that review.

Specific Authority 1001.02 FS. Law Implemented 1003.56 FS., as amended by Chapter 2002-387, Laws of Florida. History—New 10-30-90, Amended \_\_\_\_\_.

6A-6.0909 Exemptions Provided to English Language Learners Limited English Proficient Students.

(1) English Language Learners shall be assessed for academic progress using guidelines established under Section 1008.22, Florida Statutes. English Language Learners who have been enrolled in school in the United States for less than twelve (12) months may be exempted from the statewide assessment in reading and shall undertake the annual CELLA assessment in accordance with Rule 6A-6.0902, F.A.C. Students in grades 4 and 7, who have been in an ESOL program for two or fewer years may be exempted from participation in the statewide assessment program.

(2) Each school district shall administer CELLA to English Language Learners exempted from statewide assessment in accordance with subsection (1) of this rule offer alternatives to the statewide assessment program for the measurement of minimum standards in grades 4 and 7.

(a) ~~The alternatives shall measure the same minimum standards as those measured by the statewide assessment program provided, however, that methods appropriate for the limited English proficient student are used.~~

(b) Remedial programming shall be provided to those students who do not meet the performance standards of the statewide assessment program.

(3) English Language Learners Limited English proficient students who have completed the credits required for graduation and who have failed to meet the 10th grade standards as measured by the Florida Comprehensive Assessment Test (FCAT) SSAT I and II or alternative statewide assessment program shall be eligible for compensatory education for “a thirteenth year” as provided in Section 1003.43, F.S.

(a) Alternative methods of meeting the standards of the FCAT SSAT I or alternative statewide assessment program standards shall be used, where feasible, for English Language Learners limited English proficient students who are unable to demonstrate mastery of the standards due to deficiencies in English language proficiency.

(b) English Language Learners Limited English proficient students who failed to meet the standards after completing the “thirteenth year” may be eligible to be reported for FTE funding in the appropriate courses in the adult education program of the Florida Education Finance Program.

(4) The Department of Education shall assist the district in identifying or developing the alternative methods referenced in subsections ~~(2)~~ and (3) of this rule.

(5) If the number of English Language Learners limited English proficient students in a district is fewer than ten within a radius of twenty miles of a given school or within the school attendance zone, whichever is larger, a district may apply to the

Florida Department of Education for an exemption from the delivery of basic ESOL ~~through an ESOL teacher certified in ESOL for this group of students~~. Exemptions shall be granted on a one year basis, are renewable, and may be granted only if the district documents specific efforts to address the English language needs of its students.

(6) The Florida Department of Education shall review annually the personnel utilized in teaching English Language Learners limited English proficient students by program for the purpose of identifying the areas of need as “critical teacher shortage” areas. The State Board of Education shall take all necessary steps to assure that the benefits set forth in Section 1009.58, F.S., shall be made available to teachers in critical teacher shortage areas.

(7) Upon verification by a superintendent that the district has been unsuccessful in recruiting ESOL basic, ESOL subject matter, or home language instructors, and that certain positions at given schools cannot be filled during any school year with a person who meets the certification requirements in the Course Code Directory as adopted by reference in Rule 6A-1.09441, F.A.C., or the inservice requirements as specified in Rule 6A-6.0907, F.A.C., a teacher who does not meet the requirements may be assigned to such a classroom on conditions that meet the terms of Rule 6A-1.0503, F.A.C.

Specific Authority 1001.02 FS. Law Implemented 1003.56 FS., as amended by Chapter 2002-387, Laws of Florida. History—New 10-30-90, Amended \_\_\_\_\_.

6A-6.09091 Accommodations of the Statewide Assessment Program Instruments and Procedures for English Language Learners Limited English Proficient Students.

(1) The Department of Education shall provide accommodations for English Language Learners (ELLs) limited English proficient (LEP) students to enable them to fully participate in the statewide assessment program as defined in Sections 1008.22, 1008.34 and 1001.11, F.S.

(2) Each school board shall utilize appropriate test accommodations within the limits prescribed herein. School district personnel are required to implement the accommodations in a manner that ensures the test responses are the independent work of the student. Personnel are prohibited from assisting a student in determining how the student will respond or directing or leading the student to a particular response.

(3) School districts shall offer test accommodations to ELLs LEP students who currently are receiving services in a program operated in accordance with an approved ELL district LEP plan. The assessment tests may be administered with any one or a combination of the accommodations authorized herein that are determined to be appropriate for the individual student. Accommodations for statewide assessment tests shall include:

(a) ~~High School Competency Test and Florida Comprehensive Assessment Test.~~



1. ~~ELLs Students~~ may be given additional time to complete each test section, and the entire test may be administered over one or more days. Students who begin any individual section of the test shall complete it in the same school day.

2. ~~ELLs Students~~ may be given access to English-to-heritage language/heritage language-to-English dictionaries such as those made available to ~~ELLs LEP students~~ in an instructional setting. A dictionary written exclusively in the heritage language or in English shall not be provided.

3. ~~ELLs Students~~ may be given the opportunity to be tested in a separate room with the English for Speakers of Other Languages (ESOL) or heritage language teacher serving as test administrator. If the ~~ELL student~~ is not of legal age, the parents of said student shall be informed of this particular accommodation and shall be given the opportunity to select the preferred method of test administration.

4. ~~ELLs Students~~ taking the mathematics test section may be provided limited assistance by the ESOL or heritage language teacher using the student's heritage language. This assistance shall be as follows:

a. The teacher may answer student inquiries related to any of the test directions.

b. The teacher may answer specific inquiries concerning a word or phrase in a particular test question that is confusing the student because of limited English proficiency. In no case shall assistance be given the student in actually solving the mathematics questions.

c. Questions for clarification posed by individual students must be answered on an individual basis by the test administrator to prevent interference with another student's ability to concentrate.

5. ~~ELLs Students~~ taking the communications or reading test sections may be provided limited assistance by the ESOL or heritage language teacher using the student's heritage language. This assistance shall be as follows:

a. The teacher may answer student inquiries related to any of the general test directions as long as the ~~ELL student~~ is not unmistakably led to infer the correct answer to any of the questions.

b. The teacher shall not answer ~~ELLs' students'~~ inquiries about the reading passages, the question stems, or answer alternatives.

c. ~~ELLs The students~~ may have access to the dictionary specified in subparagraph (3)(a)2., F.A.C., of this rule, but the student is expected to read the reading passage, the question stems, and the answer alternatives in English.

6. ELLs taking the writing test may be provided limited assistance by the ESOL heritage language teacher using the student's heritage language. This assistance shall be as follows:

~~(b) Writing Assessment Test.~~

~~a.1.~~ Flexible setting. ~~ELLs Students~~ may be given the opportunity to be tested in a separate room with the ESOL or heritage language teacher serving as test administrator. If the ~~ELL student~~ is not of legal age, the parents of said student shall be informed of this particular accommodation and shall be given the opportunity to select the preferred method of test administration.

~~b.2.~~ Assistance in the heritage language. The ESOL or heritage language teacher may answer student questions about the general test directions in their heritage language, but the teacher is prohibited from answering questions about the writing prompt.

~~c.3.~~ Flexible scheduling. ~~ELLs Students~~ may take the test during several brief sessions within one school day. All testing must be completed within the prescribed testing period shown in the test administration manual.

~~d.4.~~ Flexible timing. ~~ELLs Students~~ may be provided additional time beyond the time limit specified in the test administration manual for administration of the test to English proficient students ~~non-LEP students~~.

~~e.5.~~ Dictionary. ~~ELLs LEP students~~ may have access to English-to-heritage language/heritage language-to-English dictionaries, such as those made available to ~~ELLs LEP students~~ in an instructional setting. A dictionary written exclusively in the heritage language or in English shall not be provided.

(4) Each school board shall establish procedures whereby training shall be provided to the ESOL or heritage language teacher who is administering any of the statewide assessment tests. The training shall be designed to teach the teacher how to administer the statewide assessment tests within the limits prescribed in this rule.

(5) ~~ELLs Limited English proficient students~~ who otherwise are classified as exceptional education or handicapped students shall be afforded the additional test accommodations specified in Rule 6A-1.0943, F.A.C.

Specific Authority 1008.22(10) FS. Law Implemented 1003.43(8), 1008.22(3) FS. History--New 10-17-00, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Lori Rodriguez, Bureau of Student Achievement through Language Acquisition, Department of Education

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Eric J. Smith, Commissioner of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 27, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 14, 2008

**DEPARTMENT OF REVENUE**

RULE NOS.:	RULE TITLES:
12-14.003	Remittance of Costs to the Department of Revenue
12-14.005	Form for Remittance of Costs to the Department of Revenue

**PURPOSE AND EFFECT:** The Clerk of the Court Revenue Remittance System was developed for Florida clerks of the court to remit taxes, fees, fines, reimbursements, court costs, or other court-related funds collected to the Department for distribution. This system was developed jointly by the Department and the Florida Association of Court Clerks to implement Section 213.13, F.S. Rule Chapter 12-28, F.A.C., currently provides for the electronic remittance of the funds and for the electronic transmission of return/remittance detail for the funds. The purpose of this rulemaking is to remove these obsolete rules and forms that were previously used for the remittance of funds collected under Section 938.01, F.S., by the clerks of the court to the Department for distribution.

**SUMMARY:** The proposed repeal of Rule 12-14.003, F.A.C. (Remittance of Costs to the Department of Revenue) removes obsolete provisions that are no longer used by the Department for the remittance of funds collected under Section 938.01, F.S., by the clerks of the court to the Department.

The proposed repeal of Rule 12-14.005, F.A.C. (Form for Remittance of Costs to the Department of Revenue) removes the adoption, by reference, of obsolete Form DR-143, Remittance of \$3.00 Additional Court Costs.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** No Statement of Estimated Regulatory Cost was prepared.

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

**SPECIFIC AUTHORITY:** 938.01(1) FS.

**LAW IMPLEMENTED:** 938.01 FS.

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

**DATE AND TIME:** March 2, 2009, 10:00 a.m.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Larry Green at (850)922-4830. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

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

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

12-14.003 Remittance of Costs to the Department of Revenue.

Specific Authority 938.01(1) FS. Law Implemented 938.01 FS. History--New 5-11-83, Formerly 12-14.03, Repealed.

12-14.005 Form for Remittance of Costs to the Department of Revenue.

Specific Authority 938.01(1) FS. Law Implemented 938.01 FS. History--New 8-4-83, Formerly 12-14.05, Amended 10-20-91, 8-10-92, Repealed.

**NAME OF PERSON ORIGINATING PROPOSED RULE:** Janet Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407

**NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE:** Governor Charlie Crist and members of the Florida Cabinet, Attorney General Bill McCollum, Chief Financial Officer Alex Sink, and Agriculture Commissioner Charles H. Bronson, as agency head of the Department of Revenue

**DATE PROPOSED RULE APPROVED BY AGENCY HEAD:** January 27, 2009

**DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:** No Notice of Proposed Rule Development is required to be published in the Florida Administrative Weekly when repealing a rule section or rule chapter.

**DEPARTMENT OF REVENUE**

RULE NOS.:	RULE TITLES:
12-18.001	Authorization for Compensation
12-18.002	Eligibility to File Claim for Compensation
12-18.004	Submission of Information and Claims for Compensation
12-18.008	Compensation for Vending Machine Violations

**PURPOSE AND EFFECT:** The purpose of the proposed amendments to Rule Chapter 12-18, F.A.C. (Compensation for Tax Information), is to: (1) clarify the taxes, surtaxes, surcharges, and fees for which the Department is authorized to pay compensation for information on tax violations; and (2) adopt revisions to the application for compensation that are

necessary to assure that only those informants authorized to receive compensation for information on tax violations are paid the authorized amount of compensation.

SUMMARY: The proposed amendments to Rule 12-18.001, F.A.C. (Authorization for Compensation), clarify the taxes, surtaxes, surcharges, and fees for which the Department is authorized to pay compensation for information on tax violations.

The proposed amendments to Rule 12-18.002, F.A.C. (Eligibility to File Claim for Compensation), provide that a completed Form DR-55, Application for Compensation for Tax Information, will establish the applicant's priority to any claim for compensation.

The proposed amendments to Rule 12-18.004, F.A.C. (Submission of Information and Claims for Compensation): (1) adopt revisions to Form DR-55 necessary to assure that only those informants authorized to receive compensation for information on tax violations are paid the authorized amount of compensation; and (2) update information on how to obtain a copy of the form from the Department.

The proposed amendments to Rule 12-18.008, F.A.C. (Compensation for Vending Machine Violations), update information on how to send information on tax violations.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

SPECIFIC AUTHORITY: 212.0515(8), 213.06(1), 213.30(1) FS.

LAW IMPLEMENTED: 92.525(2), 212.0515, 213.30 FS.

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

DATE AND TIME: March 2, 2009, 10:00 a.m.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Larry Green at (850)922-4830. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

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

THE FULL TEXT OF THE PROPOSED RULES IS:

12-18.001 Authorization for Compensation.

(1)(a) The Executive Director of the Department of Revenue or the Executive Director's designee is authorized to compensate persons who provide information leading to the punishment of, or collection of taxes, surtaxes, surcharges, fees, penalties, or interest from, any person with respect to the taxes enumerated in Section 213.05, F.S. The Department is not authorized to compensate persons who provide information with respect to a revenue or tax law that is not administered, regulated, controlled, and collected by the Department, as provided in Section 213.05, F.S. No person is authorized under these rules to make any offer, or promise, or otherwise to bind the Executive Director or the Executive Director's designee with respect to the payment of any compensation or the amount thereof.

(b) The Department administers, regulates, controls, and collects the following:

1. Communications services tax;
2. Corporate income and emergency excise tax;
3. Estate tax;
4. Excise tax on documents (documentary stamp tax);
5. Fuel taxes on motor fuel, diesel fuel, aviation fuel, and alternative fuel, including local option taxes;
6. Government leasehold intangible personal property tax;
7. Gross receipts tax on dry-cleaning;
8. Gross receipts tax on natural gas, manufactured gas, or electricity;
9. Insurance premium taxes, fees, regulatory assessments, excise taxes, and surcharges;
10. Intangible personal property taxes;
11. Local option convention development tax, tourist development tax, and tourist impact tax when the imposing local government has not elected to self-administer the tax;
12. Miami-Dade Lake Belt mitigation and water treatment upgrade fees;
13. Motor vehicle warranty fees;
14. Pollutant taxes;
15. Rental car surcharge;
16. Sales and use tax and local option discretionary sales surtaxes;
17. Severance taxes and surcharges on gas and sulfur production, oil production, and solid mineral severance; and
18. Solid waste fees, including the new tire fee and the new battery fee.

(2) No change.

Specific Authority 213.06(1), 213.30(1) FS. Law Implemented 213.30 FS. History--New 6-21-88, Amended 11-14-91, 9-14-93, 10-19-99,

12-18.002 Eligibility to File Claim for Compensation.

(1) No change.

(2) Eligibility for any compensation that may be due will be limited to the first person who provides information that results in the Department's collection of previously uncollected taxes. The applicant's priority as to any claim for compensation will be established according to the date and time the Department receives a completed Form DR-55, Application for Compensation for Tax Information (incorporated by reference in Rule 12-18.004, F.A.C.) ~~the information.~~

(3) through (5) No change.

Specific Authority 213.06(1), 213.30(1) FS. Law Implemented 213.30 FS. History—New 6-21-88, Amended 11-14-91, 10-19-99, \_\_\_\_\_.

12-18.004 Submission of Information and Claims for Compensation.

(1) Information relating to violations of the Florida revenue laws should be submitted to the Process Manager, Refunds and Distribution Process, or the Process Manager's designee. Information must be submitted in writing. Correspondence should be directed to the Florida Department of Revenue, Rewards – General Tax Administration Refunds and Distribution Process, Compensation for Tax Information, P. O. Box 6417, Tallahassee, Florida 32314-6417, or to any Department of Revenue Service Center. If the information is submitted in person, the name and official title of the Department of Revenue employee to whom it is submitted and the date on which it is submitted must be included in the formal claim for reward. (See Rule 12-18.008, F.A.C., for information on reporting violations regarding vending machines.)

(2) A person who is submitting information to the Department and intends to apply for compensation must shall notify the person to whom he or she submits the information of such intention and must file a formal claim, signed with his or her legal name, as soon after the submission of the information as practical. Applications for compensation under Section 213.30, F.S., must be made in writing. Applications must be complete; the Department will not process incomplete applications.

(3)(a) The Department designates Form DR-55, Application for Compensation for Tax Information, as the form to be used by claimants for this purpose. Form DR-55, Application for Compensation for Tax Information (R. 11/08 08/06, Effective \_\_\_\_\_), is hereby incorporated, by reference, in this rule.

(b) Copies of this form may be obtained, without cost, through one or more of the following methods: 1) downloading the form from the Department's Internet site at [http://www.myflorida.com/dor/forms\\_rewards.html](http://www.myflorida.com/dor/forms_rewards.html); or, 2) ~~faxing a forms request to the Distribution Center at (850)922-2208; or, 3)~~ calling the Department at (800)352-9273; or, 3) visiting any local Department of Revenue Service Center Distribution Center at (850)488-8422; or, 4) writing the Florida Department of Revenue, Distribution

Center, 168A Blountstown Highway, Tallahassee, Florida 32304; ~~or, 5) visiting any local Department of Revenue Service Center to personally obtain a copy.~~ Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331 or (850)922-1115.

Specific Authority 213.06(1), 213.30(1) FS. Law Implemented 92.525(2), 213.30 FS. History—New 6-21-88, Amended 11-14-91, 10-19-99, 10-1-03, 10-30-06, \_\_\_\_\_.

12-18.008 Compensation for Vending Machine Violations.

(1) The Department of Revenue is authorized to compensate persons who provide information leading to the recovery of unpaid taxes derived from the operation of vending machines within this state. This rule section will shall be used by the Department in the administration of this authority.

~~Cross-reference: Rule 12A-1.044, F.A.C.~~

(2) through (3) No change.

(4) Eligible persons desiring to file a claim for compensation may shall report violations regarding a vending machine by calling toll free number 1(800)FL-AWARD (1-800-352-9273) or (850)487-9987, or by writing the Florida Department of Revenue, Tax Violations – General Tax Administration, Compensation for Tax Information, P. O. Box 5139, Tallahassee, Florida 32314-5139. The use of the toll free number is encouraged, since the applicant's priority for the claim for compensation will be established by the date and time the Department receives the information specified under subsection (5).

(5)(a) All claims for a reward relating to an operator's failure to affix the required notice must shall include the following information:

1. through 4. No change.

(b) No change.

(6) through (7) No change.

~~(8) Where any conflicting language exists between Rules 12-18.001 through 12-18.004, F.A.C., and this rule section, the provisions of this rule section are controlling.~~

Specific Authority 212.0515(8), 213.06(1), 213.30(1) FS. Law Implemented 212.0515, 213.30 FS. History—New 5-11-92, Amended 10-19-99, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Janet Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor Charlie Crist and members of the Florida Cabinet, Attorney General Bill McCollum, Chief Financial Officer Alex Sink, and Agriculture Commissioner Charles H. Bronson, as agency head of the Department of Revenue

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 27, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development Workshop was published in the Florida Administrative Weekly on November 21, 2008 (Vol. 34, No. 47, pp. 6071-6072). A rule development workshop was conducted on December 9, 2008. No comments were received by the Department. Technical changes have been made by the Department

**DEPARTMENT OF REVENUE**

RULE NOS.:	RULE TITLES:
12-24.001	Scope of Rules
12-24.002	Definitions
12-24.003	Requirements to File or to Pay Taxes by Electronic Means
12-24.004	Enrollment
12-24.005	Methods of Payment by Electronic Means
12-24.007	Electronic Payment Transmission Errors
12-24.008	Procedures for Payment
12-24.009	Due Date; General Provisions
12-24.010	General Administrative Provisions; Voluntary Participation; Confidentiality; Granting of Waivers From Electronic Filing Requirements
12-24.011	Public Use Forms

PURPOSE AND EFFECT: The purpose of the proposed amendments to Part I (Electronic Funds Transfer and Return Submission) of Rule Chapter 12-24, F.A.C. (Payment of Taxes and Submission of Returns by Electronic Means; Taxpayer Recordkeeping and Retention Requirements), is to: (1) incorporate the provisions of Sections 14 and 30, Chapter 2007-106, L.O.F., which lower the annual threshold from \$30,000 or more annually in tax to \$20,000 or more annually in tax (for communications services tax, \$50,000 to \$20,000); (2) incorporate the provisions of Sections 30-32, Chapter 2007-106, L.O.F., which require those corporations that are required to file their federal income tax returns electronically to file their Florida corporate income tax returns with the Department electronically; and (3) update the list of taxes, surtaxes, surcharges, and fees for which the Department is requiring electronic tax payments and returns.

SUMMARY: The proposed amendments to Rule 12-24.001, F.A.C. (Scope of Rules), include the statutory provisions regarding the electronic filing of returns and information reports that track the movement of fuel in Florida and the statutory provisions regarding the electronic filing of Florida corporate income tax returns.

The proposed amendments to Rule 12-24.002, F.A.C. (Definitions): (1) add a definition for “tax collector”; (2) change the term “preparer” to “unemployment tax agent,” to

distinguish a person who prepares unemployment tax returns from a person who prepares tax returns in general; (3) remove definitions that are unnecessary; and (4) update the list of taxes, surtaxes, surcharges, and fees administered by the Department that are included in the definition of “tax type” for purposes of the rule chapter.

The proposed amendments to Rule 12-24.003, F.A.C.: (1) change the title of the rule to “Requirements to File or to Pay Taxes by Electronic Means” to more accurately reflect the provisions contained in the rule; (2) update the list of tax types for which taxpayers are required to pay electronically, to file returns electronically, or to pay and file electronically; (3) lower the annual threshold from \$30,000 or more annually in tax to \$20,000 or more annually in tax (for communications services tax, \$50,000 to \$20,000), as provided in Sections 14 and 30, Chapter 2007-106, L.O.F.; (4) implement the provisions of Section 206.485, F.S., which require taxpayers who report information for tracking movements of petroleum products in Florida to file tax returns and information reports electronically; (5) incorporate the provisions of Sections 30-32, Chapter 2007-106, L.O.F., which require those corporations that are required to file their federal income tax returns electronically to file their Florida corporate income tax returns electronically using the Internal Revenue Service’s e-File program; (6) provide that corporations who paid more than \$20,000 in corporate income/emergency excise tax must file their Florida corporate income tax returns using the Internal Revenue Services e-File program; (7) provide the tax types that are required to be paid and filed electronically by tax collectors who collect public money; and (8) provide that the Department will notify taxpayers and unemployment tax agents who initially meet the requirements to file and pay electronically at their last known address.

The proposed amendments to Rule 12-24.004, F.A.C. (Enrollment): (1) remove provisions from this rule that are redundant of Rule 12-24.005, F.A.C.; (2) provide that the Department will notify taxpayers and unemployment tax agents who initially meet the requirements to file and pay electronically and those that are voluntarily enrolled, but will be required to file and pay electronically; (3) provide that the Department uses social security numbers as identifying numbers and is required to maintain social security numbers as confidential; and (4) remove the incorporation of Form DR-600, which will be incorporated into new Rule 12-24.011, F.A.C.

The proposed amendments to Rule 12-24.005, F.A.C. (Methods of Payment by Electronic Means), remove an obsolete reference to use of the ACH credit method on January 1, 2003.

The proposed amendments to Rule 12-24.007, F.A.C. (Electronic Payment Transmission Errors), remove provisions regarding the annual calendar of dates for electronic payments and returns provided by the Department.

The proposed amendments to Rule 12-24.008, F.A.C. (Procedures for Payment), change the terms “company and identification number” and “payment identification number” to “user information.”

The proposed amendments to Rule 12-24.009, F.A.C. (Due Date; General Provisions), provide that the Department will supply an annual calendar of dates for electronic payments and returns to assist taxpayers in meeting all statutory requirements for timely electronic payments and returns.

The proposed amendments to Rule 12-24.010, F.A.C. (General Administrative Provisions; Voluntary Participation; Confidentiality; Granting of Waivers From Electronic Filing Requirements): (1) remove the requirements to taxpayers to request in writing to voluntarily participate in electronically paying and filing of taxes and tax returns; and (2) update the list of statutory references under which taxpayers can establish the grounds for a waiver from electronic filing requirements.

Proposed new Rule 12-24.011, F.A.C. (Public Use Forms), adopts, by reference, forms used by the Department in administration of the e-Services Program for paying taxes and filing returns electronically.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** No Statement of Estimated Regulatory Cost was prepared.

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

**SPECIFIC AUTHORITY:** 202.26(3)(a), 206.485(1), 213.06(1), 213.755(8), (9), 220.21(2), (3) FS.

**LAW IMPLEMENTED:** 202.28, 202.30, 206.485, 212.12, 213.755, 220.21(2), (3), 443.1317, 443.163 FS.

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

**DATE AND TIME:** March 2, 2009, 10:00 a.m.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Larry Green at (850)922-4830. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

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

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

#### 12-24.001 Scope of Rules.

Part I of this rule chapter sets forth the rules to be used by the Department of Revenue in the administration of Sections 202.30, ~~206.485, and~~ 213.755, ~~and~~ 220.21(2) and (3), F.S., authorizing the Executive Director to require taxpayers specified by statute or rule to pay taxes and fees and to file tax returns by electronic means. Part I of this rule chapter also sets forth the rules to be used by the Department in administering Section 443.163, F.S., authorizing the Executive Director to require ~~unemployment tax agents preparers~~ specified by statute or rule to pay taxes and to file returns by electronic means. ~~If there is a conflict between these rules and any other rules applicable to the payment of taxes and fees and the filing of tax returns, information reports, and data by electronic means, these rules shall govern.~~

Specific Authority 202.26(3)(a), ~~206.485(1), 213.06(1), 213.755(8), (9), 220.21(2), (3)~~ FS. Law Implemented 202.30, ~~206.485, 213.755, 220.21(2), (3),~~ 443.1317, 443.163 FS. History—New 12-19-89, Amended 10-24-96, 4-30-02, 10-5-03, \_\_\_\_\_.

#### 12-24.002 Definitions.

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

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

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

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

(4) through (5) No change.

(6) “Submission day” means the day on which a taxpayer or ~~unemployment tax agent preparer~~ communicates payment or tax return information to the Data Collection Center.

(7) “Submission period” means:

(a) For the electronic submission of a payment and return together, or just a payment, the specified time interval in each submission day during which an electronic payment or electronically-filed tax return information received by the Data Collection Center is processed for transactions occurring on the next business day, or on a date specified by the taxpayer or ~~unemployment tax agent preparer~~. Electronic payment and electronically-filed tax return information must be communicated to the Data Collection Center and completed no

later than 5:00 p.m., Eastern Time, on the submission day to clear the Automated Clearing House ACH for deposit in the State Treasury on the next business day.

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

(8) "Data Collection Center" means the Department, or a third party vendor, who, under contract with the Department, collects and processes electronic payments and electronically-filed tax return information from taxpayers or unemployment tax agents preparers.

(9) No change.

(10) "Due date" means the date on or before which an electronic payment must be received or an electronically-filed tax return must be submitted by a taxpayer or unemployment tax agent preparer under a revenue law of this state.

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

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

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

(14) through (17) renumbered (11) through (14) No change.

~~(18) "Personal identification number (PIN or password)" means a confidential code assigned to each taxpayer or preparer which uniquely identifies the payor and allows the payor to communicate payment information and/or return information, information reports, or data to the Data Collection Center.~~

(15)(19) "Unemployment tax agent Preparer" means a person that prepared and reported the Employer's Quarterly Report (UCT-6) for 100 or more employers in any calendar quarter in the preceding state fiscal year. For the purposes of this definition, "prepared and reported" means the completion of the Employer's Quarterly Report (UCT-6) and the submission of the completed report directly to the Data Collection Center. An unemployment tax agent A-preparer is not required to pay taxes by electronic means, but if the agent preparer voluntarily chooses to submit payment by electronic means, the payment must be submitted in accordance with these rules.

~~(16)(20) No change.~~

(17) "Tax collector" means any officer whose duties require or authorize him or her to collect public money, as provided in Section 219.01, F.S., and to remit such funds to the Department for distribution, as provided in Section 219.07, F.S.

(18)(21) "Taxpayer" means any person required to pay an amount by electronic means or file a tax return, information report, or data by electronic means. For the purpose of these rules, "person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a

unit and also includes any political subdivision, municipality, state agency, bureau, or department and includes the plural as well as the singular number. For electronic payment purposes, the term "person" does not include political subdivisions, municipalities, state agencies, bureaus, or departments that which remit taxes subject to electronic payment requirements through journal transfer. Solely for the purposes of these rules, a person required to electronically-pay tax or to electronically-file a tax return, information report, or data acting as a collection agent, or dealer for the state will shall nonetheless be considered a taxpayer.

~~(19)(22) No change.~~

~~(20)(23) "Tax type" means a tax, surtax, surcharge, or fee that which is subject to remittance of payments, and the submission of tax returns, information reports, or data, by electronic means to the Department, each of which shall be considered a separate category of payment.~~ The tax types for which taxpayers or unemployment tax agents preparers will be required to pay amounts due and/or submit tax returns, information reports, or data by electronic means are as follows:

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

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

(c) Documentary stamp tax;

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

(e) Gross receipts tax on dry-cleaning;

~~(f)(d) Gross receipts tax on natural gas, manufactured gas, or electricity~~ (Chapter 203, F.S.) reported on Form DR-133;

~~(g)(e) Insurance~~ All taxes reported on Forms DR-907 and DR-908, including insurance premium taxes, fees, and regulatory assessments, excise taxes, and surcharges required to be remitted to the Department subject to the provisions of Chapter 624, F.S., the excise tax on property insurance (Section 175.101, F.S.), and the excise tax on casualty insurance (Section 185.08, F.S.), and the insurance policy surcharge (Section 252.37, F.S.);

~~(h)(f) Miami-Dade Lake Belt mitigation and water treatment upgrade fees~~ Intangible personal property taxes (Chapter 199, F.S.), as reported on Form DR-601 series;

(i) Motor vehicle warranty fees;

(j) Pollutant taxes;

(k) Rental car surcharge;

(l) Sales and use tax, discretionary sales surtaxes, and any tourist development tax, tourist impact tax, or convention development tax administered by the Department;

~~(m)(g)~~ Severance taxes and surcharges on gas and sulfur production, oil production, and solid mineral severance (Chapter 211, F.S.) and the Miami-Dade Lake Belt Mitigation Fee (Chapter 373, F.S.) reported on Form DR-140 series;

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

~~(i)~~ Communications services tax (Chapter 202, F.S.) reported on Form DR-700016 and communications services use tax (Chapter 202, F.S.) reported on Form DR-700019; and,

~~(n)~~ Solid waste fees, including the new tire fee (waste tire fee) and the new or remanufactured battery fee;

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

(24) through (25) renumbered (21) through (22) No change.

Specific Authority 202.26(3)(a), 206.485(1), 213.06(1), 213.755(8), (9), 220.21(2), (3) FS. Law Implemented 202.30, 206.485, 213.755, 220.21(2), (3), 443.1317, 443.163 FS. History—New 12-19-89, Amended 1-8-91, 10-24-96, 4-30-02, 10-5-03, \_\_\_\_\_.

#### 12-24.003 General Requirements to File or to Pay Taxes by Electronic Means.

(1) Any taxpayer subject to the following taxes, surtaxes, surcharges, and fees who has paid that tax, surtax, surcharge, or fee in the prior state fiscal year in an amount of \$20,000 \$30,000 or more must pay the taxes, surtaxes, surcharges, or and fees due during the succeeding calendar year by electronic means:

(a) ~~Documentary stamp tax (other than remittances subject to Section 213.13, F.S.) Sales and use tax, local option sales taxes, surcharges, surtaxes, and solid waste fees;~~

~~(b)~~ Corporate income/franchise tax and emergency excise tax;

~~(b)(e)~~ Fuel taxes reported on Form DR-182 (Florida Air Carrier Fuel Tax Return) Motor fuel, diesel fuel, liquefied petroleum gas, aviation fuel, oil and gas production, and pollutant taxes;

~~(d)~~ Local option fuel tax;

~~(c)(e)~~ Insurance premium taxes, fees, regulatory and assessments, excise taxes, and surcharges required to be remitted to the Department;

~~(f)~~ Gross receipts tax;

~~(g)~~ Intangible personal property tax;

~~(d)(h)~~ Severance taxes and Miami-Dade Lake Belt mitigation and water treatment upgrade fees Mitigation Fee; and

~~(e)(i)~~ Pollutant taxes imposed under Section 376.75, F.S., and under Part IV, Chapter 206, F.S.; ~~Documentary stamp tax (other than remittances subject to Section 213.13, F.S.);~~

~~(f)~~ Severance taxes and surcharges on gas and sulfur production, oil production, and solid mineral severance.

(2) The following taxpayers must pay taxes, surtaxes, surcharges, and fees and file tax returns by electronic means during the succeeding calendar year when the Any taxpayer subject to the following taxes or fees who has paid that tax or fee in the prior state fiscal year in an amount of \$30,000 or more must file tax returns by electronic means:

(a) Has paid any one of the following taxes, surtaxes, surcharges, or fees in the prior state fiscal year in an amount of \$20,000 or more: Sales and use tax, local option sales taxes, surcharges, surtaxes, and solid waste fees; and

1. Communications services tax;

2. Corporate income/franchise tax and emergency excise tax;

3. Gross receipts tax on natural gas, manufactured gas, or electricity; or.

4. Sales and use tax, discretionary sales surtaxes, any tourist development tax, tourist impact tax, or convention development tax administered by the Department, rental car surcharge, and solid waste fees in the aggregate amount of \$20,000 or more for all business locations.

~~(b)~~ Files a consolidated sales and use tax return (Forms DR-15CON and DR-7) ~~Intangible personal property tax.~~

~~(c)~~ Files tax returns to report information for tracking movements of petroleum products on Form DR-309631 (Terminal Supplier Fuel Tax Return), Form DR-309632 (Wholesaler/Importer Fuel Tax Return), or Form DR-309635 (Blender/Retailer of Alternative Fuel Tax Return).

~~(d)~~ Filed an Employer's Quarterly Report (Form UCT-6) for ten (10) or more employees in any calendar quarter during the preceding state fiscal year.

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

~~(a)~~ Taxpayers who report information for tracking movements of petroleum products are required to file Form DR-309636 (Terminal Operator Information Return), Form DR-309637 (Petroleum Carrier Information Return), and Form DR-309638 (Exporter Fuel Tax Return) by electronic means with the Department.

~~(b)~~ Any corporation with assets of \$10 million or more and that files at least 250 federal tax returns annually with the Internal Revenue Service is required to file its federal income tax returns and its Florida corporate income tax returns using the Internal Revenue Service e-File program. Any corporation that paid \$20,000 or more in corporate income/emergency excise tax in the prior fiscal year must file its Florida corporate income tax return using the Internal Revenue Service e-File program.



(c) Prepared and reported Form UCT-6 (Employer's Quarterly Report) for 100 or more employees in any calendar quarter in the preceding state fiscal year.

(4) Any tax collector, as defined in Rule 12-24.002, F.A.C., who has paid the following taxes, surtaxes, fees, and interest earned in an aggregate amount of \$20,000 during the prior state fiscal year, must pay the taxes, surtaxes, fees, and interest earned, and file tax returns for those revenues, due during the succeeding calendar year by electronic means: In addition, any taxpayer subject to the taxes enumerated in subsection (1) must pay taxes and fees and/or file tax returns by electronic means if he or she:

(a) Interest earned on investment of funds under Section 219.075, F.S.; Filed a zero return for an applicable tax period for taxes due pursuant to Chapters 212 and 220, F.S.;

(b) Motor vehicle warranty fees; and Filed a consolidated return pursuant to the provisions of Chapter 212, F.S., for every applicable tax period in the prior state fiscal year; or

(c) Sales tax and discretionary sales surtaxes. Has two or more places of business for which the combined tax and/or fee payments equal or exceed \$30,000 for the state fiscal year ending June 30, 2002, or any year thereafter, for taxes due pursuant to Chapter 212, F.S.

(5)(a) All taxpayers or preparers required to pay taxes or fees and/or file tax returns by electronic means ~~must shall~~ participate for the entire calendar year for which they have enrolled. Taxpayers must continue to participate in subsequent calendar years until such time that the taxpayer no longer meets the electronic filing and reporting requirements of this rule for an entire state fiscal year.

(b) The Department will notify taxpayers and unemployment tax agents who initially meet the requirements Persons required to participate on the basis of prior state fiscal year tax payments will be notified by the Department at their last address of record. Once notified of this requirement, the taxpayer or unemployment tax agent preparer must transmit by electronic means all payments and/or returns for that tax type as provided in this rule. Changes in a taxpayer's or preparer's tax liability or registration during an enrollment period shall not suspend or terminate the requirement to pay taxes or file returns by electronic means for the entire calendar year for which he or she is enrolled.

Specific Authority 202.26(3)(a), 206.485(1), 212.06(1)(a), 213.06(1), 213.755(8), (9), 220.21(2), (3) FS. Law Implemented 202.30, 206.485, 213.755, 220.21(2), (3), 443.1317, 443.163 FS. History—New 12-19-89, Amended 1-8-91, 11-17-93, 4-30-02, 10-5-03, \_\_\_\_\_.

#### 12-24.004 Enrollment.

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

paying taxes or fees by electronic means available to taxpayers only as an exception under the provisions of subsection 12-24.008(3), F.A.C.

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

1. The taxpayer or unemployment tax agent is not currently enrolled to pay that tax, surtax, surcharge, or fee or to file that tax return by electronic means; or

2. The taxpayer or unemployment tax agent is voluntarily enrolled to pay and/or file by electronic means and will be required to pay that tax, surtax, surcharge, or fee or to file that tax return by electronic means in the upcoming calendar year.

(b) The notification by the Department will include:

1. Information An Enrollment and Authorization for e-Services Program (Form DR-600) or instructions on how to access and complete enrollment on the Department's Internet site, which instructions are hereby incorporated by reference; and

2. A Florida e-Services Programs Calendar of Due Dates (Form DR-659); and

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

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

(2)(3) Upon receipt of the enrollment package, the taxpayer or unemployment tax agent preparer must, on or before December 1 (February 1 for taxpayers remitting only unemployment tax):

(a) Access and complete enrollment for all required tax types on the Department's Internet site at [myflorida.com/dor/eservices](http://myflorida.com/dor/eservices) [[www.myflorida.com/dor](http://www.myflorida.com/dor)]; or

(b) If the taxpayer or unemployment tax agent is unable to use the Department's Internet site to enroll, Obtain and complete a separate Form DR-600, Enrollment and Authorization for e-Services Program (incorporated by reference in Rule 12-24.011, F.A.C.), for each tax and return the form(s) # to the Department at the address indicated on the form, if the taxpayer or preparer is unable to use the Department's Internet site to enroll.

(3)(4) Enrollment for the e-Services Program requires the submission of the following information on Form DR-600 that includes:

(a) The taxpayer's or unemployment tax agent's preparer's business entity name;

~~(b)4.~~ The taxpayer's or unemployment tax agent's preparer's tax identification numbers assigned by the federal government and the Department, including tax account number if different from the tax identification numbers. Social Security Numbers are used by the Department as unique identifiers for the administration of Florida's taxes. Social Security Numbers obtained for tax administration purposes are confidential under Sections 213.053 and 119.071, F.S., and not subject to disclosure as public records.

~~2. The preparer's agent i.d. number assigned by the Department, plus the information required by subparagraph (b)1. of this subsection for every employer for which the enrollee currently prepares and reports Form UCT 6.~~

~~(c) Tax type;~~

~~(d)(e) The A contact person's name, mailing address, telephone number, fax number, and e-mail address of a contact person who is responsible for electronic payments and/or electronic filing of returns for the taxpayer's or unemployment tax agent's preparer's business;~~

~~(e)(d) Whether the contact person is an employee of the business or an independent tax preparer;~~

~~(f) If completed by an independent tax preparer or an unemployment tax agent, the preparer's taxpayer identification number or unemployment tax agent number;~~

~~(g)(e) The tax and/or fee type(s) type for which the taxpayer or unemployment tax agent preparer is enrolling;~~

~~(h)(f) The filing and payment method the taxpayer or unemployment tax agent preparer requests;~~

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

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

~~(4)(5) By completing and submitting the this enrollment information request (form DR-600), the taxpayer or unemployment tax agent preparer is applying to file tax returns and reports and make tax and fee payments to the Department electronically. In addition, by completing and submitting this enrollment request, the taxpayer or unemployment tax agent preparer and the Department agree that:~~

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

~~(b) The taxpayer's or unemployment tax agent's preparer's electronic transmission of such reports, returns, and payments must be made in a manner compatible with the Department's software, equipment, and facilities. Any failure to comply with~~

this term ~~will shall~~ result in the taxpayer or unemployment tax agent preparer being deemed to have failed to file a return or payment.

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

~~(d)1.~~ By typing his or her name on the signature line of an electronically-submitted enrollment for the e-Services Program Form DR-600, the taxpayer or unemployment tax agent preparer is declaring, under penalties of perjury, that he or she is authorized to sign on behalf of the applicant entity, and that he or she has personally reviewed the information provided read Form DR-600, and that the facts stated ~~on the form~~ are true.

2. The typed name of the taxpayer or unemployment tax agent preparer or its authorized agent(s) affixed to a completed and properly submitted enrollment for the e-Services Program will Form DR-600 shall be deemed to appear on electronically filed tax returns, as if actually so appearing.

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

~~(5)(6)~~ Upon receipt of enrollment information, the Department will Data Collection Center shall assign a confidential user information personal identification number directly to the taxpayer or unemployment tax agent enrolling preparer to be used by the taxpayer or preparer when communicating electronic payment or return information to the Data Collection Center. This number shall be provided to the taxpayer prior to the date the first required payment is due under the e-Services program for all accounts who timely file the Form DR-600 with the Department.

~~(7)(a)~~ The Department prescribes ~~Form DR-600, Enrollment and Authorization for e-Services Program (r. 01/03), Form DR-654, Request for Waiver From Electronic Filing (r. 7/03), and Form DR-659, Florida EFT Program Electronic Tax Payment Calendar (r. 10/02)~~ as the forms to be used for the purposes of this chapter and hereby incorporates these forms by reference. Copies of the forms discussed in this rule chapter may be obtained, without cost, by one or more of the following methods: 1) writing the Florida Department of Revenue, Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304; or, 2) faxing the Distribution Center at (850)922-2208; or, 3) using a fax machine telephone handset to call the Department's automated Fax on Demand system at (850)922-3676; or 4) visiting any local Department of Revenue Service Center to personally obtain a copy; or, 5)

calling the Forms Request Line during regular office hours for general taxes at (800)352-3671 (in Florida only) or (850)488-6800, or for unemployment tax at (800)482-8293 (nationwide); or 6) downloading selected forms from the Department's Internet site at the address shown inside the parentheses ([www.myflorida.com/dor](http://www.myflorida.com/dor)). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.

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

Specific Authority 202.26(3)(a), 206.485(1), 213.06(1), 213.755(8), (9), 220.21(2), (3) FS. Law Implemented 202.30, 206.485, 213.755, 220.21(2), (3), 443.1317, 443.163 FS. History--New 12-19-89, Amended 1-8-91, 11-17-93, 4-30-02, 10-5-03,\_\_\_\_\_.

12-24.005 Methods of Payment by Electronic Means.

(1) No change.

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

(a) through (c) No change.

(d)1. ~~Taxpayers No taxpayer~~ using the ACH credit method on January 1, 2003 shall be required to submit any additional written request for permission to do so, but may continue to use the ACH credit method unless and until such time as the Department revokes the taxpayer's right to do so pursuant to paragraph (c) of this rule.

2. Nothing in this rule shall be construed to prohibit the use of the ACH credit method by a business that is currently not licensed to do business in Florida, unless such business does not qualify, as discussed in paragraph (a) of this rule.

Specific Authority 202.26(3)(a), 206.485(1), 213.06(1), 213.755(8), (9), 220.21(2), (3) FS. Law Implemented 202.30, 206.485, 213.755, 220.21(2), (3), 443.1317, 443.163 FS. History--New 12-19-89, Amended 1-8-91, 11-17-93, 4-30-02, 10-5-03,\_\_\_\_\_.

12-24.007 Electronic Payment Transmission Errors.

(1) If a taxpayer makes an error on an electronic payment for a particular period, ~~the such~~ taxpayer ~~must shall~~, on the nearest business day after the date on which the error is discovered, contact the Department, Monday through Friday, 8:00 a.m. to 7:00 p.m., Eastern Time, e-Services at the telephone number for general taxes at (800)352-3671 ~~or (in Florida only), (850)488-6800, or~~ for unemployment tax at (800)482-8293 (nationwide), or at the Department's Internet address at [myflorida.com/dor/e-services](http://myflorida.com/dor/e-services) [www.myflorida.com/dor](http://www.myflorida.com/dor) for specific instructions. Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331 or (850)922-1115.

(a) through (b) No change.

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

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

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

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

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

Specific Authority 202.26(3)(a), 206.485(1), 213.06(1), 213.755(8), (9), 220.21(2), (3) FS. Law Implemented 202.30, 206.485, 213.755, 220.21(2), (3), 443.1317, 443.163 FS. History--New 12-19-89, Amended 1-8-91, 11-17-93, 4-30-02, 10-5-03,\_\_\_\_\_.

12-24.008 Procedures for Payment.

(1) ACH Debit Method.

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

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

1. ~~User information Company and ID number (Payment identification number);~~
2. Tax payment amount;
3. Tax period; and
4. Payment type; ~~and~~

5. ~~Confirmation code.~~

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

(d) No change.

(e) Example. A taxpayer who uses the ACH debit method to remit the January sales tax payment will first determine the total amount of tax due with respect to the sales and use tax return (amount due with return) for the January applied period. Prior to the end of the submission period on February 19 (or the last business day prior to the 19th), the taxpayer must contact the Data Collection Center. After establishing contact, the taxpayer will identify the electronic payment account with the ~~user information preassigned payment identification number~~ and ~~provide state~~ the payment type (~~tax payment monthly return~~), the payment amount (\$12,345), and the tax period (~~1/31/08 January~~). At the end of the communication, the taxpayer will receive a ~~number that confirmation code which~~ will verify the accuracy of the recorded tax payment and serve as a receipt for the transaction. Electronic payment information involving the ACH debit transfer will be electronically transmitted to the Department on February 19, shortly after the expiration of the contact period. The actual tax payment of \$12,345, however, will not be posted as collected funds to the Treasurer's account until the following day, February 20. Taxpayers must file the required return as provided by law and rule. If applicable, the taxpayer must check the box on the return to show payment by electronic payment.

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

(b) through (c) No change.

(d) If the taxpayer fails more than three times in 12 consecutive calendar months, ~~beginning January 1, 2002~~, to provide the Department with the required addenda record ~~that which~~ conforms to the requirements of this rule, the taxpayer will be required to use the ACH debit method.

(e) Example. A taxpayer who uses the ACH credit method to remit the January sales tax payment will first determine the total amount of tax due with respect to the sales and use tax return (amount due with return) for the January applied period. At a time arranged between the taxpayer and the taxpayer's financial institution, the taxpayer will provide the taxpayer's financial institution with the information necessary to initiate a timely transfer of the January tax payment and an accompanying CCD + addenda record. The timely initiated ACH credit transfer of \$12,345 will be posted as collected

funds to the State Treasurer's account on February 20. To be timely, the ACH credit transfer of January tax must be deposited to the State Treasury account as collected funds on or before February 20. Taxpayers must file the required return as provided by law and rule. If applicable, the taxpayer must check the box on the return to show payment by electronic funds transfer EFT.

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

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

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

1. through 2. No change.

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

Specific Authority 202.26(3)(a), ~~206.485(1)~~, 213.06(1), ~~213.755(8)~~, (9), ~~220.21(2)~~, (3) FS. Law Implemented 202.30(1), ~~206.485~~, 213.755, ~~220.21(2)~~, (3), 443.1317, 443.163 FS. History—New 12-19-89, Amended 1-8-91, 11-17-93, 4-30-02, 10-5-03, \_\_\_\_\_.

12-24.009 Due Date; General Provisions.

(1)(a) Taxpayers who are required to pay taxes or fees through electronic means must initiate the transfer so that the amount due is deposited as collected funds to the State Treasurer's account on or before the due date under the appropriate revenue law. If a tax due date falls on a Saturday, a Sunday, a legal holiday as defined in Section 683.01, F.S., or on a legal holiday of the jurisdiction in which the taxpayer's financial institution is located, the deposit by electronic means is required on or before the first banking day thereafter. The transfer of funds will occur the following banking day. For the purposes of these rules, "banking day" has the meaning

prescribed in Section 674.104(1), F.S. If the date on which the taxpayer is required to initiate either an ACH debit or an ACH credit transfer falls on a Saturday, a Sunday, or a business or banking holiday, the taxpayer must initiate the transaction on the preceding business day pursuant to subsection 12-24.008(3), F.A.C.

(b) To assist the taxpayer in complying with all statutory requirements for timely electronic payment of taxes, surtaxes, surcharges, and fees due and the timely filing of tax returns, the Department will provide an annual calendar of dates by which the initiation of a return with payment, or payment only, must be completed. The annual calendar of dates is posted on the Department's website at myflorida.com/dor/e-services and may also be obtained by calling the Department toll-free at (800)352-3671. Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331 or (850)922-1115.

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

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

(a) No change.

(b)1. A taxpayer who is required to remit payments under the electronic payment program and who is unable to make a timely payment because of system failures within the banking system/ACH interface that which are beyond the taxpayer's control are shall not be subject to penalty or interest for late payment or loss of collection allowance or discount. The taxpayer must provide a written explanation and supporting documentation to the e-Services Unit concerning any system failure within the banking system/ACH interface to: e-Services, Florida Department of Revenue, Post Office Box 5885, Tallahassee, Florida 32314-5885.

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

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

(4) No change.

Specific Authority 202.26(3)(a), 206.485(1), 213.06, 213.755(8), (9), 220.21(2), (3) FS. Law Implemented 202.28, 202.30, 206.485, 212.12, 213.755, 220.21(2), (3), 443.1317, 443.163 FS. History--New 12-19-89, Amended 4-30-02, 10-5-03,\_\_\_\_\_.

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

(1) Taxpayers or unemployment tax agents preparers who need general information concerning the e-Services programs can contact the Department toll-free at (800)352-3671 (Florida only) or (850)488-6800 or for unemployment tax toll-free at (800)482-8293 (nationwide), or at the Department's Internet address at www.myflorida.com/dor. Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331 or (850)922-1115.

(2) Voluntary inclusion ~~inclusion~~ in the electronic payment program. Any taxpayer or unemployment tax agent may ~~Those taxpayers who are required to participate in the Department's e-Services electronic payment program due to a prior year tax liability for any tax type subject to electronic payment may request permission to also remit other tax types by electronic payment. See Rule 12-24.004, F.A.C., Enrollment. Written requests for voluntary inclusion in the electronic payment program must be filed with the e-Services Unit at least 60 days prior to the due date of the payment(s) in question.~~ Taxpayers may terminate voluntary participation by filing a written notice of termination with the e-Services Unit at least 60 days prior to the due date of the last electronic payment. Termination requests ~~Requests for voluntary inclusion and termination notices~~ must be directed to the e-Services Program Unit, Florida Department of Revenue, Post Office Box 5885, Tallahassee, Florida 32314-5885.

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

(4)(a) The Department is authorized to waive the requirement that a taxpayer or unemployment tax agent preparer submit tax returns by electronic means, if the taxpayer or unemployment tax agent preparer can establish that he or she is unable to comply with e-filing requirements pursuant to the provisions in the introductory paragraph to Section 213.755, F.S. To request a waiver the taxpayer or unemployment tax agent preparer must complete and submit form DR-654, (Request for Waiver From Electronic Filing (incorporated by reference in Rule 12-24.011, F.A.C.), revised March, 2003, to establish in writing the basis under which such waiver is requested. ~~The This form notifies the taxpayer that the~~ Department will verify the information submitted on the form, and will respond in writing to the taxpayer after reviewing the form. ~~Information requested from the taxpayer on form DR-654 includes:~~

1. ~~Business partner or tax account number.~~
2. ~~Federal employer identification number or social security number.~~
3. ~~Business name, phone number, fax number, and e-mail address.~~
4. ~~Contact person and contact address.~~

5. Whether the taxpayer or preparer currently files information electronically with other businesses or government agencies.

6. Whether the taxpayer has a computer with a 486/66 MHz processor or higher that operates Windows 98 or higher, or has a Macintosh version 5.1.6.

7. Whether the taxpayer uses an external programmer, software developer, or service provider for the computation, reporting, and/or payment of this tax, and if so, the name of the programmer, developer, or provider.

8. Any written explanation describing any additional reason for requesting a waiver.

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

1. Any of the circumstances specified in Sections 202.30(2)(b), 213.755(9)(a) and (b), 220.21(2), or 443.163(3), F.S.; or

2. The taxpayer or unemployment tax agent preparer does not have a modem; or

3. The taxpayer or unemployment tax agent preparer does not have access to the Internet.

(c) A waiver shall be valid for up to two years, and the issuance of a subsequent waiver will shall be contingent on the taxpayer or unemployment tax agent preparer working with the Department during the current waiver period to address the issues that originally necessitated the issuance of the waiver. The requirement to work with the Department to address the issues that necessitated a waiver means the taxpayer or unemployment tax agent preparer will: discuss existing computer capabilities with the Department; consider any assistance, recommendations, or training the Department offers; and implement any Department recommendation that enables the taxpayer or unemployment tax agent preparer to submit returns by electronic means, unless the taxpayer or unemployment tax agent preparer can establish that the circumstances or reasons as set forth in Sections 202.30(2)(b), 213.755(9)(a) and (b), 220.21(2), or 443.163(3) ~~Section 213.755~~, F.S., continue to apply.

Specific Authority 202.26(3)(a), 206.485(1), 213.06(1), 213.755(8), (9), 220.21(2), (3) FS. Law Implemented 202.30, 206.485, 213.755, 220.21(2), (3), 443.1317, 443.163 FS. History—New 12-19-89, Amended 1-8-91, 11-17-93, 4-30-02, 10-5-03,\_\_\_\_\_.

12-24.011 Public Use Forms.

(1)(a) The following public use forms and instructions are utilized by the Department for the purposes of the e-Services Program and are hereby incorporated by reference in this rule.

(b) Copies of the forms may be obtained, without cost, by one or more of the following methods: 1) downloading the form from the Department's Internet site at [myflorida.com/dor/forms](http://myflorida.com/dor/forms); or, 2) calling the Department at (800)352-3671, Monday through Friday, 8:00 a.m. to 7:00 p.m., Eastern Time; or, 3) visiting any local Department of

Revenue Service Center or, 4) writing the Florida Department of Revenue, Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304. Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331 or (850)922-1115.

<u>Form Number</u>	<u>Title</u>	<u>Effective Date</u>
<u>(2) DR-600</u>	<u>Enrollment and Authorization for e-Services Program (R. 11/08)</u>	___
<u>(3) DR-654</u>	<u>Request for Waiver From Electronic Filing (R. 01/09)</u>	___

Specific Authority 202.26(3)(a), 206.485(1), 213.06(1), 213.755(8), (9), 220.21(2), (3) FS. Law Implemented 202.30, 206.485, 213.755, 220.21(2), (3), 443.1317, 443.163 FS. History—New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Janet Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor Charlie Crist and members of the Florida Cabinet, Attorney General Bill McCollum, Chief Financial Officer Alex Sink, and Agriculture Commissioner Charles H. Bronson, as agency head of the Department of Revenue

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 27, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development Workshop was published in the Florida Administrative Weekly on November 21, 2008 (Vol. 34, No. 47, pp. 6072-6073). A rule development workshop was conducted on December 9, 2008. No comments were received by the Department.

**DEPARTMENT OF REVENUE**

<u>RULE NOS.:</u>	<u>RULE TITLES:</u>
12-28.001	Scope
12-28.002	Definitions
12-28.003	Enrollment Procedures
12-28.004	Transmitting Funds and Return/Remittance Detail to the Department
12-28.005	Means of Communication to Report Payment Information
12-28.006	Remittance or Transmission Problems
12-28.007	Procedures for Payment
12-28.008	Due Date; General Provisions
12-28.009	Distribution of Funds Received by the Department

PURPOSE AND EFFECT: Section 213.13, F.S., requires the Department of Revenue and the Florida Association of Court Clerks to jointly develop an electronic system to remit taxes, fees, fines, reimbursements, court costs, or other court-related funds to the Department for distribution to designated state funds. That system was developed in 2001 and has been in operation since that date. Improvements have been made to the procedures employed to use the electronic remittance system that simplify the use of the system. The purpose of the proposed amendments to Rule Chapter 12-28, F.A.C. (Clerks of the Court Remittance Requirements), is to update the procedures to reflect the improvements to the Clerk of the Court Revenue Remittance System.

SUMMARY: The proposed amendments to Rule 12-28.001, F.A.C. (Scope), provide technical changes.

The proposed amendments to Rule 12-28.002, F.A.C. (Definitions): (1) add or amend definitions for the terms “electronic funds transfer,” “payment information,” “return/remittance detail,” “session,” and “working day” and remove definitions that are unnecessary.

The proposed amendments to Rule 12-28.003, F.A.C. (Enrollment Procedures), update the information on how a clerk of the court or his or her authorized designee is to enroll in the Department’s e-Services program and how to obtain the enrollment form from the Department.

The proposed substantial rewording of Rule 12-28.004, F.A.C. (Transmitting Funds and Return/Remittance Detail to the Department), updates the procedures for the electronic remittance of funds and the detail remittance information by the clerk of the court to the Department and provides current requirements to report transmission problems and to replace failed payments. When in effect, this substantial rewording will replace the provisions that are provided in Rule 12-28.005, F.A.C. (Means of Communication to Report Payment Information), Rule 12-28.006, F.A.C. (Remittance or Transmission Problems), and Rule 12-28.007, F.A.C. (Procedures for Payment). These rules are proposed to be repealed.

The proposed substantial rewording of Rule 12-28.008, F.A.C. (Due Date; General Provisions), clarifies that funds collected by the clerk of the court are to be remitted to the Department as follows: (1) documentary stamp tax and nonrecurring intangible personal property tax are to be remitted weekly; (2) court-related fees, service charges, court costs, and fines are to be remitted monthly; and (3) the cumulative excess over the approved budget amount, as provided in Section 28.36, F.S., is to be remitted annually on the last working day before December 31. The proposed rule provides information on how to obtain the annual calendar of due dates that is developed by the Department to assist the clerks in complying with their statutory requirements for the remittance of funds to the Department.

The proposed amendments to Rule 12-28.009, F.A.C. (Distribution of Funds Received by the Department), provide: (1) that the Department will make the required entries in the state accounting system within two working days of receiving an accurate payment; and (2) the Department will assist agencies in correcting errors in deposits to other agencies.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

SPECIFIC AUTHORITY: 213.13 FS.

LAW IMPLEMENTED: 28.245, 28.36, 28.37(4), 213.13, 213.131, 219.07 FS.

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

DATE AND TIME: March 2, 2009, 10:00 a.m.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Larry Green at (850)922-4830. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

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

THE FULL TEXT OF THE PROPOSED RULES IS:

12-28.001 Scope.

This rule chapter sets forth the rules to be used in the administration of Section 213.13, F.S., which provides for the electronic remittance of all ~~funds moneys~~ collected by the Clerks of the Court (“Clerk”) on behalf of the state or on behalf of the Court for distribution to the state and the electronic transmission of return/remittance detail for such remittance, ~~and the electronic submission of associated remittance information,~~ to the Department of Revenue for further disbursement to the various trust funds and agencies as designated in the applicable statutes.

Specific Authority 213.13 ~~213.06(1)~~ FS. Law Implemented 213.13, 213.131, 219.07 FS. History—New 8-19-02, Amended \_\_\_\_\_.

## 12-28.002 Definitions.

For the purposes of this rule chapter, the following terms and phrases when used in this rule chapter shall have the meanings ascribed to them in this rule, except where the context clearly indicates a different meaning:

~~(1) “ABA” means the American Banking Association.~~

~~(1)(2) “ACH” or “Automated Clearing House” means a central distribution and settlement point for the electronic clearing of debits and credits between financial institutions rather than the physical movement of paper items.~~

~~(3) “ACH credit” means the electronic transfer of funds generated by a Clerk, cleared through the ACH for deposit to the State Treasury.~~

~~(2)(4) “ACH debit” means the electronic transfer of funds from a Clerk’s account, which is generated upon the Clerk’s instruction and cleared through the Automated Clearing House ACH for deposit to the State Treasury.~~

~~(5) “Addenda record” means that information as provided in Rule 12-24.008(2), F.A.C.~~

~~(6) “Associated remittance information” means that information required by statute or rules adopted by agencies that administer the programs for which the funds are collected.~~

~~(3)(7) “Department” means the Florida Department of Revenue.~~

~~(4) “Electronic funds transfer” means an electronic transfer of funds.~~

~~(8) “E cash presentment” means the conversion of an electronic check into an EFT payment.~~

~~(9) “EFT” means an electronic funds transfer, electronic payment, or E-cash presentment.~~

~~(5)(10) “Payment information” means the data that a Clerk must submit when making an electronic remittance e-cash presentment and that must be communicated to the Department. Payment information includes the:~~

(a) Payor information, which consists of the:

1. Bank account number; and,

2. Financial routing and transit number as issued by the American Banking Association;

(b) Contact person information, which consists of:

1. Name;

2. Business telephone number; and,

3. Business mailing address.

(c) Name of person authorized to sign the electronic remittance.

(6) “Return/remittance detail” means that information required by statute or rules adopted by agencies that administer the programs for which the funds are collected. This information must, at a minimum, contain detailed data regarding the specific taxes, fees, fines, reimbursements, court costs, and other court-related funds that constitute the funds being electronically remitted.

(7) “Session” means the period of time from the point the Clerk logs onto the Internet Clerk of Court Revenue Remittance System up to the point the Clerk exits the system. A session can be concluded by:

(a) The Clerk through completion of an electronic remittance of funds and transmission of detail and receipt of a confirmation number, which is defined as a “transaction”; or,

(b) The Clerk through a “save and exit” feature (to return later for completion); or,

(c) The system because of inactivity or a connectivity failure.

(8) “Working day” means any calendar day other than a Saturday, Sunday, or federal or state legal holiday or legal holiday of the jurisdiction in which the Clerk’s financial institution is located.

~~(11) “FLAIR” means the Florida Accounting Information Resource.~~

Specific Authority 213.13 213.06(1) FS. Law Implemented 28.245, 28.36, 28.37(4), 213.13, 213.131, 219.07 FS. History—New 8-19-02, Amended \_\_\_\_\_.

## 12-28.003 Enrollment Procedures.

(1)(a) Each Clerk of the Court or authorized designee who is required to electronically transmit return/remittance detail and to electronically submit payment information for such detail remit funds pursuant to Section 213.13, F.S., must enroll with the Department by accessing and completing enrollment on the Department’s Internet site at myflorida.com/dor/eservices or completing an Enrollment and Authorization for e-Services Program (Form DR-600, incorporated by reference in Rule 12-24.011, F.A.C.) Internet Registration/Authorization Agreement (Form DR-653W).

(b) Copies of the form may be obtained, without cost, by one or more of the following methods: 1) downloading the form from the Department’s Internet site at myflorida.com/dor/forms; or, 2) calling the Department at (800)352-3671, Monday through Friday, 8:00 a.m. to 7:00 p.m., Eastern Time; or, 3) visiting any local Department of Revenue Service Center or, 4) writing the Florida Department of Revenue, Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304. Persons with hearing or speech impairments may call the Department’s TDD at (800)367-8331 or (850)922-1115.

(2) Within 30 consecutive calendar days of receiving the completed enrollment DR-653W form, the Department will issue the Clerk an acknowledgement letter that includes the following:

(a) The Clerk’s business partner or user identification LOGIN Identification number.

(b) The Clerk’s password.

(c) Instructions for signing onto the Internet Clerk of Court Revenue Remittance System.



(d) The telephone number of the Department's e-Services Unit, which will assist the Clerks in complying with the requirements of this program and Section 213.13, F.S.

(3)(a) If for any reason a Clerk or his or her authorized designee is replaced or is unable to perform the activities required by Section 213.13, F.S., the successor must notify ~~and enroll with~~ the Department within 30 consecutive calendar days of taking office or being hired by accessing and completing a change request on the Department's Internet site, or completing and submitting a new Form DR-600.

(b) However, all regularly-scheduled fund remittances must continue without interruption during any transition period.

~~(4)(a) The Department prescribes Form DR-653W, Internet Registration/Authorization Agreement (August, 2002), as the form to be used for the purpose of this chapter and hereby incorporates this form by reference. Copies of this form may be obtained without cost by one or more of the following methods: 1) writing the Florida Department of Revenue, Distribution Center, 168 Blountstown Highway, Tallahassee, Florida 32304; or 2) faxing the Distribution Center at (850)922-2208; or 3) using a fax machine telephone handset to call the Department's automated Fax on Demand system at (850)922-3676; or 4) visiting any local Department of Revenue Service Center to personally obtain a copy; or 5) calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or 6) downloading selected forms from the Department's Internet site at the address shown inside the parentheses (<http://www.myflorida.com/dor/>). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.~~

~~(b) The Department will accept facsimile transmissions of the completed DR-653W at telephone number (850)922-5088.~~

~~Specific Authority 213.13 ~~213.06(4)~~ FS. Law Implemented 28.245, 28.36, 28.37(4), 213.13, 213.131, 219.07 FS. History-New 8-19-02, Amended \_\_\_\_\_.~~

(Substantial rewording of Rule 12-28.004 follows. See the Florida Administrative Code for present text.)

12-28.004 Transmitting Method of Transferring Funds and Return/Remittance Detail Associated Remittance Information to the Department.

(1) Means of Funds and Detail Transmission – Clerks are required to use, as their means of funds and detail transmission, a personal computer capable of accessing the Internet using a version of the Microsoft Internet Explorer browser that utilizes 128-bit secure socket layer (SSL) encryption. Versions at or above 6.0 are strongly recommended.

(2) Procedures for Funds and Detail Transmission.

(a) After successful enrollment, the Clerk or his or her designee will access the Internet Clerk of Court Revenue Remittance System using his or her Business Partner Number/User ID and Password. This action initiates a session, as defined in Rule 12-28.002, F.A.C.

(b) During the session, the Clerk or his or her designee will be required to provide the following information:

1. Reporting period;

2. Return/remittance detail;

3. Payment information, as defined in Rule 12-28.002, F.A.C.

(c) The funds and detail transmission is not completed during any session until a confirmation number is issued. This number provides a means of verifying the transaction and serves as the Clerk's receipt.

(3) Method for Funds Remittance. The prescribed method for funds remittance by the Clerks to the Department is the ACH-Debit method of electronic funds transfer. The Department will bear the costs of processing the funds remittance by the ACH-Debit method.

(4) Transmission Problems, Remittance Errors, and Failed Payments.

(a) Reporting Transmission Problems – Should the Clerk experience problems transmitting the return/remittance detail, the Clerk is required to contact the Department's e-Services Unit as soon as possible:

1. By telephone at (850)487-9713, or;

2. By e-mail at [cc-ehelp@dor.state.fl.us](mailto:cc-ehelp@dor.state.fl.us).

(b) Correcting Remittance Errors.

1. If, before 4:00 p.m., E.T., on the day of submission, a Clerk discovers that an error has been made in the return/remittance detail, the Clerk must contact the Department's e-Services Unit at (850)487-9713 for assistance.

2. If, after 4:00 p.m., E.T., on the day of submission, or on any subsequent day thereafter, a Clerk discovers an error has been made in the return/remittance detail, the Clerk must contact the Department's Refunds and Distribution Process at (850)487-1150 to report the error.

(c) Replacing failed payments – If a Clerk discovers that an electronic payment has failed or will be returned by his or her financial institution, the Clerk must immediately resubmit only the payment using the "Returned Item Repayment" page of the Internet Clerk of Court Revenue Remittance System. Should the Clerk require additional assistance, the Clerk may contact the Department's Returned Items Unit at (850)488-8663.

~~Specific Authority 213.13 ~~213.06(4)~~ FS. Law Implemented 28.245, 28.36, 28.37(4), 213.13, 213.131, 219.07 FS. History-New 8-19-02, Amended \_\_\_\_\_.~~

12-28.005 Means of Communication to Report Payment Information.

Specific Authority 213.06(1), FS. Law Implemented 213.13, 213.131 FS. History—New 8-19-02, Repealed.

12-28.006 Remittance or Transmission Problems.

Specific Authority 213.06(1) FS. Law Implemented 213.13, 213.131 FS. History—New 8-19-02, Repealed.

12-28.007 Procedures for Payment.

Specific Authority 213.06(1) FS. Law Implemented 213.13, 213.131 FS. History—New 8-19-02, Repealed.

(Substantial rewording of Rule 12-28.008 follows. See Florida Administrative Code for present text.)

12-28.008 Due Date; General Provisions.

(1) The Clerks who are required to remit funds electronically must complete the transaction so that the amount due is deposited as collected funds to the State Treasurer's account on or before the remittance due date required by applicable statute or any agency rule.

(a) Weekly Remittances. Documentary stamp tax and nonrecurring intangible personal property tax remittances must be remitted on a weekly basis. The Clerk must complete the transaction before 5:00 p.m. E.T., on the sixth working day following the close of the week in which the funds were received, as provided in Section 219.07, F.S.

(b) Monthly Remittances. Court-related fees, services charges, court costs, and fines must be remitted on a monthly basis. The Clerk must complete the transaction before 5:00 p.m., Eastern Time, on the last working day before the 20th day of the month immediately following the month in which the moneys were collected, as provided in Section 28.245, F.S. Failure to do so will constitute late payment.

(c) Annual Remittance. The cumulative excess of all fees, service charges, court costs, and fines retained by the Clerk over the amount needed to meet the approved budget amount established under Section 28.36, F.S., must be remitted on an annual basis. The Clerk must complete the transaction before 5:00 p.m., Eastern Time, on the last working day before December 31, each year, as provided in Section 28.37(4), F.S.

(d) Failure to remit the funds as provided in this subsection will constitute late payment. Late payments must be deposited on the next business day following the date that the transmission was completed.

(2) To assist the Clerks in complying with all statutory requirements for timely remittance of funds due, the Department will annually develop a calendar of dates by which the initiation of a transaction must be completed before 5:00 p.m., Eastern Time. The annual calendar of remittance dates (Florida e-Services Program County Officers' Calendar of Remittance Dates, Form DR-659C) is posted on the Department's website at [myflorida.com/dor/e-services](http://myflorida.com/dor/e-services) and

may also be obtained by calling the Department toll-free at (800)352-3671 or (850)488-6800. Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331 or (850)922-1115.

Specific Authority 213.13 ~~213.06(1)~~ FS. Law Implemented 28.245, 28.36, 28.37(4), 213.13, 213.131, 219.07 FS. History—New 8-19-02, Amended.

12-28.009 Distribution of Funds Received by the Department.

(1) Upon receiving a Clerk's payment information and associated remittance information, the Department will ~~shall~~ verify that the funds for subsequent distribution reconcile with the associated remittance information provided by the Clerk.

(2) Within two working days of receiving an accurate payment from the Clerk, the ~~The~~ Department will make all required entries in the State accounting system ~~shall cause such funds to be electronically distributed in accordance with the associated remittance information to the appropriate trust fund or agency as designated in statute, within two business days of receiving an accurate payment from the Clerk. These entries will be based on the remittance detail for the appropriate trust fund or agency as designated in statute.~~

(3) If the Department determines, or is notified by a clerk's office or benefiting agency, that there is information missing, ~~or that there has been an error made in the submission of the remittance payment amount, the payment information for such remittance, or the associated remittance information for those funds deposited in a departmental fund,~~ the Department will ~~shall~~ hold the funds in the Department of Revenue Clerks of the Court Trust Fund until the Clerk has been contacted and the error has been corrected. In the case of errors in deposits to other agencies, the Department will assist the affected parties in correcting the error.

Specific Authority 213.13 ~~213.06(1)~~ FS. Law Implemented 28.245, 28.36, 28.37(4), 213.13, 213.131, 219.07 FS. History—New 8-19-02, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Janet Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor Charlie Crist and members of the Florida Cabinet, Attorney General Bill McCollum, Chief Financial Officer Alex Sink, and Agriculture Commissioner Charles H. Bronson, as agency head of the Department of Revenue

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 27, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development was published in the Florida Administrative

Weekly on November 21, 2008 (Vol. 34, No. 47, pp. 6073-6074). A rule development workshop was conducted on December 9, 2008. No comments were received by the Department

**DEPARTMENT OF REVENUE**

**Sales and Use Tax**

<b>RULE NOS.:</b>	<b>RULE TITLES:</b>
12A-1.029	Labels and Other Printed Matter Sold to Manufacturers
12A-1.036	Furniture and Storage Warehousemen
12A-1.040	Containers and Other Packaging Materials; Gift Wrapping
12A-1.075	Deposits

**PURPOSE AND EFFECT:** The purpose of the proposed repeal of Rule 12A-1.029, F.A.C. (Labels and Other Printed Matter Sold to Manufacturers) and Rule 12A-1.075, F.A.C. (Deposits), the proposed amendments to Rule 12A-1.036, F.A.C. (Furniture and Storage Warehousemen), and the proposed substantial rewording of Rule 12A-1.040, F.A.C. (Containers and Other Packaging Materials; Gift Wrapping), is to: (1) consolidate and simplify provisions for packaging materials excluded from tax, as provided in Section 212.02(14)(c), F.S., and other materials that accompany a product for sale; (2) provide for the taxability of charges by, and materials used by, warehousemen for moving, storing, packing, and shipping tangible personal property belonging to other persons; and (3) provide for the taxability of charges for gift wrapping and the taxability of materials used in gift wrapping.

Section 212.02(14)(c), F.A.C., currently provides that one-time use items that accompany a product for the convenience of the customer are not subject to tax. Items accompanying food products when sold to a customer, such as aluminum foil covering a baked potato, steak markers used to indicate how a steak is cooked, toothpicks that secure a sandwich, and leftover bags provided to customers are not subject to tax. However, Rule 12A-1.040, F.A.C., currently provides that these items are subject to tax. This rulemaking is necessary to provide that these items are packaging materials that are not subject to tax. In addition, Rule 12A-1.040, F.A.C., currently provides that "pallets for one-time use that are a part of packaging tangible personal property for shipment and sale are exempt." This rulemaking is necessary to provide the criteria used to determine when pallets and other returnable packaging containers are not subject to tax.

**SUMMARY:** The proposed repeal of Rule 12A-1.029, F.A.C. (Labels and Other Printed Matter Sold to Manufacturers), moves provisions for sales of the following items to the substantial rewording of Rule 12A-1.040, F.A.C. (Containers and Other Packaging Materials; Gift Wrapping): (1) the sale of labels, name plates, and packing inserts used as packaging

materials; (2) the sale of direction sheets and instruction books or manuals that provide instructions and accompany the product for sale; and (3) the sale of tangible advertising materials.

The proposed amendments to Rule 12A-1.036, F.A.C. (Furniture and Storage Warehousemen): (1) clarify that charges by warehousemen for moving, storing, packing, and shipping tangible personal property belonging to other persons are not subject to tax; (2) provide that warehousemen who sell packaging materials and other items are required to register as dealers and collect sales tax on sales of taxable items; (3) provide that the payment of a claim for damaged merchandise is not a sale of tangible personal property; (4) provide that warehousemen who operate a business location to sell tangible personal property must collect tax on sales of tangible personal property; and (5) provide that boxes, crates, and other materials used by warehousemen for moving, storing, packing, and shipping tangible personal property belonging to other persons are subject to tax.

The proposed amendments to Rule 12A-1.040, F.A.C. (Containers and Other Packaging Materials; Gift Wrapping), provide a single administrative rule regarding the taxability of containers and other packaging materials and items that accompany a product for sale, the taxability of tangible advertising materials that accompany a product for sale, and the taxability of items used in gift wrapping. When in effect, the provisions of the substantial rewording will provide for the administration of sales and use tax for the following:

- Materials used for packaging tangible personal property for sale;
- Instructional materials that accompany the product when sold to customers;
- Tangible advertising materials that accompany the product to the customer;
- Containers used more than one time for packaging tangible personal property;
- Deposits charged for reusable containers and the taxability of those containers;
- Dunnage used to protect packages and cargo during shipment;
- Materials used by persons who are not required to collect tax for services provided to their customers; and
- Charges for gift wrapping and the taxability of materials used in gift wrapping.

The proposed repeal of Rule 12A-1.075, F.A.C. (Deposits), moves the provisions regarding the taxability of charges for returnable containers to the substantial rewording of Rule 12A-1.040, F.A.C.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** No Statement of Estimated Regulatory Cost was prepared.

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

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

LAW IMPLEMENTED: 212.02(14), (15), (16), (18)-(21), 212.05(1), 212.06(1)(a), 212.07(1)(b), 212.08(7)(v), 212.18(3) FS.

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

DATE AND TIME: March 2, 2009, 10:00 a.m.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Larry Green at (850)922-4830. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

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

THE FULL TEXT OF THE PROPOSED RULES IS:

12A-1.029 Labels and Other Printed Matter Sold to Manufacturers.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(14), 212.05(1) FS. History—Revised 10-7-68, 6-16-72, Formerly 12A-1.29, Amended 4-2-00, Repealed \_\_\_\_\_.

12A-1.036 Furniture and Storage Warehousemen.

(1) Charges by warehousemen solely for warehousemen customarily engaged in the business of moving, storing, packing, or shipping tangible personal property belonging to other persons are not subject to tax are performing services and the gross proceeds derived therefrom are exempt. Crating, boxing, packaging and packing materials used by warehousemen in the performance of such services are purchased for use or consumption and are taxable and the seller of such materials to warehousemen shall collect and remit tax on such sales.

(2) Warehousemen who sell tangible personal property, such as boxes, crates, tape, and other packaging or shipping materials, are required to register with the Department as dealers and collect tax on their sales of taxable items. See Rule 12A-1.060, F.A.C., Registration. Sales by warehousemen of second hand furniture or other tangible personal property to which they have acquired title in cases where they hold

themselves out to the public as being engaged in the business of selling such property, are taxable. Sales at auction made by warehousemen in order to satisfy the warehousemen's lien for claim on account of moving, storing or other service charge are deemed occasional sales and are exempt.

(3) Boxes, crates, shipping containers, packaging, pallets, dunnage (blocks, timber, and bracers used to hold in place or protect cargo during shipment), and other packaging or shipping materials purchased, used, or consumed by warehousemen when moving, storing, packing, and shipping tangible personal property belonging to other persons are subject to tax. Pallets purchased by warehousemen for use as outlined in paragraph (1) of this rule are taxable.

(4)(a) The payment of a damage claim by a warehousemen for damage suffered by merchandise in transit or in storage is not a sale of tangible personal property and is not subject to tax, even when the warehouseman retains the damaged property under settlement of the claim. Charges to warehousemen for repairs to damaged merchandise are subject to tax.

(b) Any warehouseman who maintains and operates a business location, such as a salvage depot, to sell merchandise, damaged merchandise, or merchandise acquired in settlement of a claim is required to collect tax on sales of such merchandise.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(15), (20), 212.05(1)(b), 212.08(7)(v) FS. History—Revised 10-7-68, 6-16-72, Formerly 12A-1.36, Amended \_\_\_\_\_.

(Substantial Rewording of Rule 12A-1.040 follows. See Florida Administrative Code for present text.)

12A-1.040 Sales of Containers, Wrapping, and Other Packaging Packing Materials; Gift Wrapping and Related Products.

(1) SCOPE. This rule provides when items intended to accompany a product for sale are not subject to tax. Materials, containers, labels, sacks, bags, or similar items intended to accompany a product for sale are not subject to tax under the requirements provided in Section 212.02(14)(c), F.S., as outlined below.

(2) MATERIALS USED FOR PACKAGING PROPERTY FOR SALE.

(a) The sale, use, storage, or consumption of materials, containers, labels, sacks, bags, or similar items that are intended to accompany a product sold to a customer and to be used one time only for packaging tangible personal property for sale is not subject to tax when:

1. Delivery of the product would be impracticable because of the character of the contents; or

2. Such items are used for the convenience of the customer.

(b) The sale, use, storage, or consumption of materials, containers, labels, sacks, bags, or similar items used for packaging in the process of providing a service subject to tax under Chapter 212, F.S., is not subject to tax.

(c) Dealers who are registered with the Department may purchase materials, containers, labels, sacks, bags, or similar items intended to be used in the manner provided in paragraph (a) or (b) tax-exempt by issuing a copy of the dealer's Annual Resale Certificate to the selling dealer at the time of purchase, as provided in Rule 12A-1.039, F.A.C. Persons who are not required to register with the Department as a dealer under Section 212.18(3), F.S., must extend an exemption certificate to purchase such items tax-exempt. A suggested exemption certificate is provided in subsection (5) of Rule 12A-1.038, F.A.C.

(d) The following is a nonexhaustive list of materials that, when used as provided in paragraph (a) or (b), are not subject to tax:

1. Containers, such as bags, barrels, baskets, bottles, boxes, cans, carboys, cartons, cases, crates, cylinders, drums, kegs, pallets, racks, reels, sacks, skids, or spools.

2. Items used inside containers and packages to shape, stabilize, and protect the contents of the packaged tangible personal property, such as bubble wrap, excelsior, preservative materials, wax paper, wrapping papers, or waste paper.

3. Materials used to close or otherwise secure the containers, such as binding materials, carboys, cartons, cellophane, coating materials, cores, crates, glue, gummed tape, staples, strapping, string, tape, twine, wrapping paper, wire, or wire bands.

4. Materials used to provide instructions regarding the shipping of the container, such as gummed labels or tags.

(e) The sale, purchase, use, storage, or consumption of dunnage is subject to tax at the time of purchase. Dunnage is not delivered to the purchaser with the package and its contents, and it is retained by the transporter or shipper. "Dunnage" includes items that are used by the transporter or shipper under, outside, and between packages to protect the packages and their contents from damage, motion, shock, or breakage while being transported or delivered to the purchaser. Examples of dunnage are blocks, lumber, and other materials used for bracing, blocking, skidding, shoring, holding, or protecting cargo during transport.

(f) Examples:

1. Toothpaste may be sold at retail in a tube enclosed in a box. The tube of toothpaste is placed in a box that will accompany the toothpaste when sold to the consumer. Multiple units of boxes are placed in shipping containers by the manufacturer. Labels are placed on the shipping containers identifying the product and providing shipping instructions. The manufacturer then places the labeled boxes on a pallet and covers them with shrink-wrap for shipment. The pallets are not returnable to the manufacturer when the toothpaste arrives at

its destination. The toothpaste manufacturer may purchase the tubing materials, boxes, shipping containers, labels, pallets, and shrink-wrap tax-exempt.

2. Coat hangers and garment covers that are delivered with the clothing to the purchaser are packaging materials that accompany the product sold to the customer. However, coat hangers and garment covers used on display racks in stores that are retained by the store do not accompany the clothing to the customer are subject to tax.

(3) PACKAGING MATERIALS USED WHEN NO TANGIBLE PERSONAL PROPERTY IS SOLD. The purchase of materials, containers, labels, sacks, bags, or similar items is subject to tax when purchased by any person who does not sell tangible personal property to its customers. For example, bags, boxes, hangers, wrapping paper, and twine purchased for use by a laundry, dry cleaner, or any other person not selling tangible personal property are subject to tax.

(4) MATERIALS USED FOR FURNISHING OR SERVING FOOD PRODUCTS OR BEVERAGES.

(a) Materials, containers, labels, sacks, bags, or similar items that accompany a food product or drink sold to a customer and are used one time only for packaging the food product or for the convenience of the customer are not subject to tax. The following is a nonexhaustive list of such items:

1. Bags for bread or produce; bag ties; egg cartons or crates; cardboard 6-pack and 12-pack lift cartons; skewers; ice, dry ice, and salt placed directly into the packaging container of perishable food; oil used to line the inside of meat packaging containers;

2. Paper, plastic, plastic-coated, styrofoam bags, boxes, bowls, cups, dividers, liners, lids, plates, platters, trays, and other similar food and beverage containers;

3. Aluminum foil served with food products; butter chips; single-use baking dishes; steak markers, toothpicks, toothpick frills, film wrap; disposable utensils, straws, stirrers, napkins, leftover bags, boxes, or other containers.

(b) Cups, straws, plastic stirrers, and similar items used to provide beverages or other food products free to customers are subject to tax. Such items are not used for furnishing or service food products or beverages for sale.

(5) LABELS, TAGS, AND INSTRUCTIONAL MATERIALS.

(a)1. Labels, tags, and name plates, including the printing of these items, are not subject to tax when they remain affixed to tangible personal property offered for sale or affixed to the container containing tangible personal property prepared for shipment or delivery and:

a. Furnishes information as to the nature, quantity, maker, price, size, operation, or maintenance of the tangible personal property for sale; or

b. Furnishes information as to the destination or the carrying instructions for the package during shipment.

2. For example, shipping labels used on packages of tangible personal property purchased by customers containing a customer's name and address or carrying instructions, such as "Do Not Crush," "This Side Up," or "Fragile," are exempt.

(b) Bar codes and labels containing bar codes that are placed on packages by, or on behalf of, the transporter or shipper for purposes of tracking the movement of the package in transit are subject to tax.

(c) Labels, tags, and name plates that do not accompany tangible personal property for sale are subject to tax. For example, labels sold to businesses to be placed on their shelves or display racks are subject to tax.

(d) Price tags that accompany tangible personal property when sold to the retail consumer are exempt. Price tags retained by a retail merchant are subject to tax. Price tags attached to merchandise offered for sale that are removed from the merchandise and retained by the seller at the time of sale are subject to tax.

(e) Direction sheets, instruction books, pamphlets, or manuals that accompany a product to the final consumer and provide instructions on how to assemble, use, or care for the product are exempt. Technical manuals that do not accompany the product to the final consumer are subject to tax.

(f) Brochures, catalogs, price lists, point-of-sale advertising that accompany products being sold to advertise other products for sale, and displays and display containers used to display items for sale are not materials used for packaging tangible personal property for sale and are subject to tax.

#### (6) DEPOSITS FOR REUSABLE CONTAINERS.

(a)1. Deposits charged for reusable containers, such as barrels, drums, kegs, pallets, or spools, that are to be returned by the purchaser to the selling dealer upon removal of the contents from the container are not subject to tax when:

a. The amount of the deposit is separately itemized on the purchaser's bill, invoice, or other tangible evidence of sale;

b. The total amount of the deposit is refunded to the purchaser when the container is returned to the selling dealer;

c. Title to the container is retained by the selling dealer;

d. The container is used only to contain the tangible personal property sold to the purchaser while in the process of delivery or conveyance to the purchaser; and

f. The selling dealer retains records to identify which customers are holding the containers and which customers have returned the containers.

2. Example: A manufacturer ships its products to purchasers on pallets. The contents of the shipment are secured to the pallets by wire banding. The pallets are designed by the manufacturer to be used for more than one shipment, bear the name of the manufacturer, and are assigned an inventory number. When the manufacturer ships merchandise to a customer, a deposit is separately itemized on the customer's invoice to assure the return of the identified pallets. The

separately itemized deposit is not subject to tax. The purchase or fabrication of the pallets by the manufacturer is subject to tax.

(b) See Rule 12A-1.087, F.A.C., for tax-exempt portable containers, or moveable receptacles in which portable containers are placed, when used for harvesting or processing farm products.

(7) CHARGES FOR PACKAGING MATERIALS. When charges for packaging materials are separately itemized from the sales price of tangible personal property on the customer's bill, invoice, or other tangible evidence of sale, the charge for packaging materials is a part of the sales price of the tangible personal property.

#### (8) GIFT WRAPPING.

(a) The total charge for gift wrapping merchandise is subject to tax, whether charged by the seller of the merchandise or by any other person. Materials, such as paper, ribbon, bows, or tape, used in gift wrapping merchandise may be purchased tax-exempt by a dealer registered with the Department. The purchasing dealer is required to issue a copy of the dealer's Annual Resale Certificate to the selling dealer at the time of purchase, as provided in Rule 12A-1.039, F.A.C.

(b) Tax is due on the materials used by the dealer in gift wrapping merchandise at no charge to the customer.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(14)(b), (c), (15), (16), (18)-(21), 212.05(1)(b), 212.06(1)(a), 212.07(1)(b), 212.08(7)(v), 212.18(3) FS. History—Revised 10-7-68, 6-16-72, Formerly 12A-1.40, Amended \_\_\_\_\_.

#### 12A-1.075 Deposits.

Specific Authority 212.17(6), 212.18(2) FS. Law Implemented 212.02(15), (16), 212.06(1)(a) FS. History—Revised 10-7-68, 6-16-72, Formerly 12A-1.75, Repealed \_\_\_\_\_.

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

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor Charlie Crist and members of the Florida Cabinet, Attorney General Bill McCollum, Chief Financial Officer Alex Sink, and Agriculture Commissioner Charles H. Bronson, as agency head of the Department of Revenue

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 27, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development Workshop was published in the Florida Administrative Weekly on November 21, 2008 (Vol. 34, No. 47, pp. 6074-6075). A rule development workshop was conducted on December 9, 2008. No comments were received by the Department

**DEPARTMENT OF REVENUE**

**Sales and Use Tax**

<b>RULE NOS.:</b>	<b>RULE TITLES:</b>
12A-15.002	Surtax Brackets
12A-15.010	The Sale of Food, Drink, and Tangible Personal Property at Concession Stands
12A-15.011	Coin-Operated Amusement and Vending Machines, and Other Devices
12A-15.012	Alcoholic and Malt Beverages

**PURPOSE AND EFFECT:** The purpose of the proposed amendments to these sections of Rule Chapter 12A-15, F.A.C. (Discretionary Sales Surtax), is to: (1) update information in Rule 12A-15.002, F.A.C., on how to obtain copies of tax rate tables and information from the Department; (2) correct in Rule 12A-15.012, F.A.C. (Alcoholic and Malt Beverages), the divisor rate to be used to compute the amount of sales tax, plus discretionary sales surtax, due for sales of alcoholic beverages in counties that impose surtax at a total rate of 1 1/4 percent; and (3) provide effective tax rates and divisors used to compute the amount of sales tax, plus discretionary sales surtax, due in counties that may impose total surtax rates of 1 3/4 or 2 percent on sales of food and other items at concession stands in Rule 12A-15.010, F.A.C. (The Sale of Food, Drink, and Tangible Personal Property at Concession Stands), on charges for the use of amusement machines and sales of food, beverages, or other items through vending machines in Rule 12A-15.011, F.A.C. (Coin-Operated Amusement and Vending Machines, and Other Devices), and on sales of alcoholic beverages in Rule 12A-15.012, F.A.C. (Alcoholic and Malt Beverages).

**SUMMARY:** The proposed amendments to Rule 12A-15.002, F.A.C. (Surtax Brackets), update the information on how to obtain copies of tax rate tables and information from the Department.

The proposed amendments to Rule 12A-15.010, F.A.C. (The Sale of Food, Drink, and Tangible Personal Property at Concession Stands), provide the applicable divisor rates for counties that may impose discretionary sales surtaxes at the rates of 1 3/4 percent or 2 percent for purposes of computing sales tax, plus surtax, due on sales by concessionaires at arenas, auditoriums, carnivals, fairs, stadiums, theaters, and similar places of business.

The proposed amendments to Rule 12A-15.011, F.A.C. (Coin-Operated Amusement and Vending Machines, and Other Devices), provide the divisors for counties that may impose discretionary sales surtaxes at the rate of 1 3/4 percent or 2 percent for purposes of computing the amount of sales tax, plus surtax, due on sales of food, beverages, and other items of tangible personal property made through vending machines and on charges for the use of amusement machines.

The proposed amendments to Rule 12A-15.012, F.A.C. (Alcoholic and Malt Beverages): (1) provide the applicable divisor rates for counties that may impose discretionary sales surtaxes at the rates of 1 3/4 percent or 2 percent to be used for purposes of computing sales tax, plus surtax, due on sales of alcoholic beverages; (2) correct the divisor for counties that may impose a surtax rate of 1 1/4 percent on alcoholic beverages by dealers who do not sell mixed drinks; and (3) provide effective rates and applicable divisors for counties that may impose discretionary sales surtax at the rates of 1 3/4 percent or 2 percent.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** No Statement of Estimated Regulatory Cost was prepared.

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

**SPECIFIC AUTHORITY:** 212.05(1)(h), 212.0515, 212.07(2), 212.12(11), 212.17(6), 212.18(2), 213.06(1) FS.

**LAW IMPLEMENTED:** 212.02(16), (24), 212.05(1)(h), 212.0515, 212.054, 212.055, 212.07(2), (4), 212.08(4), 212.12(9), (10), (11), 212.15(1), (4), 212.18(3) FS.

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

**DATE AND TIME:** March 2, 2009, 10:00 a.m.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Larry Green at (850)922-4830. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

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

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

12A-15.002 Surtax Brackets.

The Department has prepared, for public use, ~~schedules and rate tables and information cards~~ to provide the sales tax effective brackets for counties imposing a discretionary sales surtax. Copies are available, without cost, by one or more of the following methods: 1) downloading the appropriate Sales Tax ~~Rate Table Bracket Cards~~ from the Department's Internet site at [www.myflorida.com/dor/taxes](http://www.myflorida.com/dor/taxes); or, 2) ~~faxing a forms request to the Distribution Center at (850)922-2208;~~ or, 3)

calling the Department at (800)352-3671, Monday through Friday, 8:00 a.m. to 7:00 p.m., Eastern Time; or, 3) visiting any local Department of Revenue Service Center Distribution Center at (850)488-8422; or, 4) writing the Florida Department of Revenue, Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304; or, 5) ~~visiting any local Department of Revenue Service Center to personally obtain a copy.~~ Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331 or (850)922-1115.

Specific Authority 212.12(11), 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.054, 212.055, 212.12(9), (10), (11) FS. History—New 12-11-89, Amended 8-10-92, 3-17-93, 12-13-94, 3-20-96, 6-19-01, 11-1-05,\_\_\_\_\_.

12A-15.010 The Sale of Food, Drink, and Tangible Personal Property at Concession Stands.

(1)(a) Concessionaires at arenas, auditoriums, carnivals, fairs, stadiums, theaters, and similar places of business where it is impracticable to separately state Florida sales tax on any charge ticket, sales slip, invoice, or other tangible evidence of sale, may calculate tax due for counties imposing a surtax as follows:

1. Divide the total gross receipts by the divisors provided in paragraph (b) to compute taxable sales;

2. Subtract taxable sales from the total gross receipts to compute the amount of sales tax, plus surtax, due.

(b) Divisors for counties imposing surtax at the following rates are:

<u>Surtax</u>	<u>Divisor</u>
No Surtax	1.0659
1/4%	1.0678
1/2%	1.0697
3/4%	1.0724
1%	1.0751
1 1/4%	1.0773
1 1/2%	1.0795
<u>1 3/4%</u>	<u>1.0817</u>
<u>2%</u>	<u>1.0839</u>

(2) No change.

Specific Authority 212.07(2), 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.054, 212.055, 212.15(1), (4) FS. History—New 12-11-89, Amended 3-20-96, 6-19-01, 11-1-05,\_\_\_\_\_.

12A-15.011 Coin-Operated Amusement and Vending Machines, and Other Devices.

(1) Amusement machine sales; effective tax rates.

(a) Charges for the use of amusement machines, as defined in Section 212.02(24), F.S., are subject to the surtax at the rate imposed by the county where the machine is located. To calculate the tax due in an applicable reporting period for amusement machines located in counties imposing a surtax:

1. Divide the total gross receipts from charges for the use of amusement machines by the divisors provided in paragraph (b) to compute taxable sales;

2. Subtract taxable sales from the total gross receipts to compute the amount of sales tax, plus surtax, due.

(b) Divisors for counties imposing surtax at the following rates are:

<u>Surtax</u>	<u>Divisor</u>
No Surtax	1.040
1/4%	1.0425
1/2%	1.045
3/4%	1.0475
1%	1.050
1 1/4%	1.0525
1 1/2%	1.055
<u>1 3/4%</u>	<u>1.0575</u>
<u>2%</u>	<u>1.060</u>

(c) No change.

(2)(a) Vending machine sales; effective tax rates. The amount of tax to be paid on food, beverages, and other items of tangible personal property that are sold in vending machines is subject to the surtax at the rate imposed by the county where the machine is located. To calculate the tax due in an applicable reporting period for vending machines located in counties imposing a surtax:

1. Divide the total gross receipts from sales made through the vending machines by the divisors provided in paragraph (b) to compute gross taxable sales;

2. Subtract gross taxable sales from the total gross receipts to compute the amount of tax, plus surtax, due.

(b) Divisors for counties imposing surtax at the following rates are:

<u>Surtax</u>	<u>Divisor for Food and Beverages</u>	<u>Divisor for Other Items of Tangible Personal Property</u>
No Surtax	1.0645	1.0659
1/4%	1.06655	1.0683
1/2%	1.0686	1.0707
3/4%	1.0706	1.0727
1%	1.0726	1.0749
1 1/4%	1.07465	1.0770
1 1/2%	1.0767	1.0791
<u>1 3/4%</u>	<u>1.0788</u>	<u>1.0812</u>
<u>2%</u>	<u>1.0808</u>	<u>1.0833</u>

(c) No change.

(3) No change.

Specific Authority 212.05(1)(h), 212.0515, 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(24), 212.05(1)(h), 212.0515, 212.054, 212.055, 212.07(2), 212.12(11), 212.18(3) FS. History—New 12-11-89, Amended 1-30-91, 5-12-92, 9-14-93, 11-16-93, 12-13-94, 3-20-96, 6-19-01, 11-1-05, 5-28-06,\_\_\_\_\_.



12A-15.012 Alcoholic and Malt Beverages.

(1) No change.

(2) DEALERS WHO DO NOT SELL MIXED DRINKS.

(a)1. When a dealer, located in a county imposing a surtax, who sells package goods but does not sell mixed drinks, does not put the public on notice that tax is included in the total charge, the dealer is required to remit tax at the following rates. The dealer should multiply the total gross receipts derived from the sale of package goods by the following effective tax rates to compute the amount of sales tax, plus surtax, due.

<u>County Surtax Tax</u>	<u>Effective Tax Rate</u>
No Surtax	.0635
1/4%	.0656
1/2%	.0677
3/4%	.07035
1%	.0730
1 1/4%	<u>.0753</u> <del>.07395</del>
1 1/2%	.0776
<u>1 3/4%</u>	<u>.0799</u>
<u>2%</u>	<u>.0822</u>

2. No change.

(b)1. When a dealer, located in a county imposing a surtax, who sells package goods but does not sell mixed drinks, puts the public on notice through the posting of price lists or signs prominently throughout the business establishment that tax is included in the total charge, the dealer is required to remit tax in the following manner:

a. Divide the total gross receipts by the following divisors to compute taxable sales:

<u>County Surtax Rate</u>	<u>Divisor</u>
No Surtax	1.0635
1/4%	1.0656
1/2%	1.0677
3/4%	1.07035
1%	1.0730
1 1/4%	1.0753
1 1/2%	1.0776
<u>1 3/4%</u>	<u>1.0799</u>
<u>2%</u>	<u>1.0822</u>

b. Subtract taxable sales from the total gross receipts to compute the amount of sales tax, plus surtax, due.

2. No change.

(3) DEALERS WHO SELL MIXED DRINKS.

(a)1. When a dealer, located in a county imposing a surtax, sells mixed drinks or both mixed drinks and package goods and does NOT put the public on notice that tax is included in the total charge, the dealer is required to remit tax at the following rates. The dealer should multiply the total gross receipts derived from the sale of mixed drinks and package goods by the following effective tax rates to compute the amount of sales tax, plus surtax, due.

Effective Tax

<u>County Surtax Tax</u>	<u>Rate</u>
No Surtax	.0659
1/4%	.0678
1/2%	.0697
3/4%	.0724
1%	.0751
1 1/4%	.0773
1 1/2%	.0795
<u>1 3/4%</u>	<u>.0817</u>
<u>2%</u>	<u>.0839</u>

2. No change.

(b)1. When a dealer, located in a county imposing a surtax, sells mixed drinks or both mixed drinks and package goods and puts the public on notice through the posting of price lists or signs prominently throughout the business establishment that tax is included in the total charge, the dealer is required to remit tax in the following manner:

a. Divide total gross receipts by the following divisors to compute taxable sales:

<u>County Surtax Rate</u>	<u>Divisor</u>
No Surtax	1.0659
1/4%	1.0678
1/2%	1.0697
3/4%	1.0724
1%	1.0751
1 1/4%	1.0773
1 1/2%	1.0795
<u>1 3/4%</u>	<u>1.0817</u>
<u>2%</u>	<u>1.0839</u>

b. Subtract taxable sales from the total gross receipts to compute the amount of sales tax, plus surtax, due.

2. No change.

Specific Authority 212.07(2), 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(16), 212.054, 212.055, 212.07(2), (4), 212.08(4), 212.12(11), 212.15(1), (4) FS. History--New 12-11-89, Amended 3-20-96, 6-19-01, 11-1-05,\_\_\_\_\_.

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

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor Charlie Crist and members of the Florida Cabinet, Attorney General Bill McCollum, Chief Financial Officer Alex Sink, and Agriculture Commissioner Charles H. Bronson, as agency head of the Department of Revenue

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 27, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development Workshop was published in the Florida Administrative Weekly on November 21, 2008 (Vol. 34, No. 47, pp. 6075-6076). A rule development workshop was conducted on December 9, 2008. No comments were received by the Department

**DEPARTMENT OF REVENUE**

**Sales and Use Tax**

RULE NO.: 12A-17.003  
 RULE TITLE: Registration

PURPOSE AND EFFECT: Section 5, Chapter 2008-69, L.O.F., requires the Department to release, upon the request of a local law enforcement official, the name and address of any secondary metals recycler registered with the Department within the local official's jurisdiction. This law change authorizes the Department to provide registration information regarding secondary metals recyclers that is currently provided regarding secondhand dealer registrants. The purpose of the proposed amendments to Rule 12A-17.003, F.A.C. (Registration), is to update the list of information regarding secondhand dealers and secondary metals recyclers that the Department may release to requesting local law enforcement officials.

SUMMARY: The proposed amendments to Rule 12A-17.003, F.A.C. (Registration), provide that the Department will, upon the request of a local law enforcement official, release the name and address of any secondary metals recycler registered with the Department within the local official's jurisdiction.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

SPECIFIC AUTHORITY: 213.06(1), 538.11 FS.

LAW IMPLEMENTED: 213.053(9), (11), 538.09, 538.11, 538.25, 538.26 FS.

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

DATE AND TIME: March 2, 2009, 10:00 a.m.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Larry Green at (850)922-4830. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

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

THE FULL TEXT OF THE PROPOSED RULE IS:

12A-17.003 Registration.

(1) through (5) No change.

(6)(a) Local law enforcement officials may request a report on the registration of secondhand dealers or secondary metals recyclers in their jurisdiction by calling the Department at (850)488-4772. After verifying the official's identity identify, as provided in Rule 12-22.005, F.A.C., the Department will release the following information to a law enforcement official who requests verification of a secondhand dealer's or a secondary metals recycler's certificate of registration:

1. Whether a specified person holds a valid certificate of registration;

2. Whether a specified certificate number is valid, has been canceled, or is inactive or otherwise invalid and the name of the holder of that certificate number; and

3. The name and address of any secondhand dealer or secondary metals recycler registered to do business within the official's jurisdiction.

~~(b) After verifying the official's identify, as provided in Rule 12-22.005, F.A.C., the Department will release the following information to a law enforcement official who requests verification of a secondary metals recycler's certificate of registration:~~

~~1. Whether a specified person holds a valid certificate of registration as a secondary metals recycler; and~~

~~2. Whether a specified certificate number is valid, has been canceled, or is inactive or otherwise invalid and the name of the holder of that certificate number.~~

(b)(e) Pursuant to Section 213.053(9), F.S., the Department will provide information required by an order of a judge or a subpoena.

Specific Authority 213.06(1), 538.11 FS. Law Implemented 213.053(9), (11), 538.09, 538.11, 538.25, 538.26 FS. History—New 3-15-90, Amended 11-14-91, 4-18-93, 10-18-93, 10-17-94, 3-20-96, 8-1-02, 9-15-08,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Janet Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor Charlie Crist and members of the Florida Cabinet, Attorney General Bill McCollum, Chief

Financial Officer Alex Sink, and Agriculture Commissioner Charles H. Bronson, as agency head of the Department of Revenue

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 27, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development Workshop was published in the Florida Administrative Weekly on November 21, 2008 (Vol. 47, No. 34, p. 6076). A rule development workshop was conducted on December 9, 2008. No comments were received by the Department.

**DEPARTMENT OF REVENUE**

**Miscellaneous Tax**

<b>RULE NOS.:</b>	<b>RULE TITLES:</b>
12B-5.020	Definitions; Specific Exemptions
12B-5.121	Temporary Licenses Issued Under a Declared Emergency
12B-5.130	Refunds
12B-5.150	Public Use Forms
12B-5.401	Temporary Pollutant Importer License Issued Under a Declared Emergency

**PURPOSE AND EFFECT:** The purpose of the proposed amendments to Rule 12B-5.020, F.A.C. (Definitions), is to update definitions for the terms “fuel,” “fuel grade ethanol,” and “gasohol” for purposes of determining when a product blended with gasoline is a “fuel” subject to Florida’s fuel taxes. Standards established by the federal Bureau of Alcohol, Tobacco, and Firearms distinguish products containing alcohol fit for human consumption from those that are not fit for human consumption and are used as a fuel. Products containing 100% alcohol can be consumed by humans as an alcoholic beverage. These products are subject to federal and state beverage taxes. Products that are blended with at least 1% gasoline, such as “denatured ethanol,” are not fit for human consumption and are not subject to the beverage taxes. The proposed amendments clarify that “fuel grade ethanol,” defined as ethanol with no less than 1% gasoline, is a fuel subject to Florida’s fuel taxes.

The proposed amendments include ethanol-blended fuel containing not less than 9% ethanol as “gasohol,” a product subject to Florida’s fuel taxes. The Florida Renewable Fuel Standard Act (Sections 101-107, Chapter 2008-227, L.O.F., creating Sections 526.203-526.207, F.S.) requires terminal suppliers, importers, blenders, and wholesalers to report to the Department of Revenue the number of gallons of “blended gasoline” (mixture of gasoline and 9-10% fuel ethanol) and “unblended gasoline” (gasoline containing no fuel ethanol) sold. The total number of gallons sold in Florida is reported to the Florida Department of Agriculture and Consumer Services

monthly. The proposed definitions for “fuel grade ethanol” and “gasohol” are consistent with the definitions for “blended gasoline” and “unblended gasoline.”

The purpose of the proposed creation of Rule 12B-5.121, F.A.C. (Temporary Licenses Issued Under a Declared Emergency), and 12B-5.401, F.A.C. (Temporary Pollutants Importer License Issued Under a Declared Emergency), is to implement the authority granted to the Department in Sections 15-17, Chapter 2007-106, L.O.F., to authorize the granting of temporary fuel and pollutants licenses when the Governor of Florida or the President of the United States has declared a state of emergency or major disaster in Florida or in any other state. This law temporarily expands the number of dealers authorized to provide fuel in Florida or to export fuel to other states in their time of need. The purpose of the proposed amendments to Rule 12B-5.150, F.A.C. (Public Use Forms), is to adopt the application to obtain a temporary Florida fuel license.

The purpose of the proposed amendments to Rule 12B-5.130, F.A.C. (Refunds), is to implement the provisions of Sections 1-2, Chapter 2007-31, L.O.F. Effective July 1, 2007, any person who uses motor fuel in vehicles or equipment for commercial aviation purposes may apply for a refund of the local option fuel tax, the State Comprehensive Enhanced Transportation System Tax (SCETS tax), and the fuel sales tax, imposed under paragraphs 206.41(1)(e), (f), and (g), F.S.

**SUMMARY:** The proposed amendments to Rule 12B-5.020, F.A.C. (Definitions): (1) update the definition of “alcohol” to remove the qualifications regarding the percentages of proof and purity; (2) update the definition of “fuel” to include fuel grade ethanol that is manufactured, produced, sold, or purchased for use as a gasoline blending component, or for use in a motor vehicle; (3) define “fuel grade ethanol” as ethanol with no less than 1% gasoline; and (4) update the definition for “gasohol” to mean ethanol-blended fuel that contains not more than 91% gasoline, and the ethanol content must not be less than 9%.

Proposed new Rule 12B-5.121, F.A.C. (Temporary Licenses Issued Under a Declared Emergency): (1) implements the authority granted in Sections 15-17, Chapter 2007-106, L.O.F., for the Department to authorize the granting of temporary fuel and pollutants licenses when the Governor of Florida or the President of the United States has declared a state of emergency or major disaster in Florida or in any other state; (2) provides how fuel dealers may obtain a temporary license from the Department and when a temporary Florida fuel license will be granted by the Department; (3) provides how to obtain an extension of the expiration date of a license and when an extension of the temporary license will be granted; (4) provides the Florida fuel taxes that must be collected and remitted to the Department by temporary importers, temporary exporters, and temporary carriers; (5) provides how to report and remit fuel taxes to the Department and when the taxes and returns are

due; and (6) provides when a refund of previously paid Florida fuel taxes is available to temporary licensees and how to obtain the refund from the Department.

The proposed amendments to Rule 12B-5.130, F.A.C. (Refunds), provide: (1) that any person who uses motor fuel in vehicles or equipment for commercial aviation purposes may apply for a refund of the local option fuel tax, the State Comprehensive Enhanced Transportation System Tax (SCETS tax), and the fuel sales tax, imposed under paragraphs 206.41(1)(e), (f), and (g), F.S.; and (2) that fuel used in any vehicle or equipment driven or operated upon the public highways of Florida is not eligible for a refund.

The proposed amendments to Rule 12B-5.150, F.A.C. (Public Use Forms), adopt, by reference, new Form DR-156T, Florida Temporary Fuel Tax Application, used by applicants to obtain a temporary Florida fuel license.

Proposed new Rule 12B-5.401, F.A.C. (Temporary Pollutants Importer License Issued Under a Declared Emergency): (1) implements the authority granted in Sections 15-17, Chapter 2007-106, L.O.F., for the Department to authorize the granting of temporary fuel and pollutants licenses when the Governor of Florida or the President of the United States has declared a state of emergency or major disaster in Florida or in any other state; (2) provides that no additional application is necessary to obtain a Florida temporary pollutants importer license when an application to obtain a Florida temporary importer license is made; (3) provides how to obtain an extension of the expiration date of a license and when an extension of the temporary license will be granted; (4) provides the Florida pollutant taxes that must be accrued and paid to the Department; (5) provides how to report and remit pollutant taxes to the Department and when the taxes and returns are due; and (6) provides when a refund of previously paid Florida pollutant taxes is available to temporary licensees and how to obtain the refund from the Department.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** No Statement of Estimated Regulatory Cost was prepared.

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

**SPECIFIC AUTHORITY:** 206.14(1), 206.59(1), 206.62(10), 206.87(1)(e)2., 206.8745(6), 213.06(1), 526.206 FS.

**LAW IMPLEMENTED:** 206.02, 206.021, 206.022, 206.025, 206.026, 206.027, 206.028, 206.05, 206.051(4), 206.052, 206.055, 206.095, 206.404, 206.41, 206.43, 206.62, 206.64, 206.86, 206.87, 206.874, 206.8745, 206.877, 206.90, 206.91, 206.92, 206.97, 206.9925, 206.99825(1)(a), 206.9931, 206.9942, 206.9943, 213.255(2), (3), 215.26(2), 526.203 FS.

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

DATE AND TIME: March 2, 2009, 10:00 a.m.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Larry Green at (850)922-4830. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Ronald Gay, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4732

THE FULL TEXT OF THE PROPOSED RULES IS:

#### PART I TAX ON MOTOR AND DIESEL FUEL

12B-5.020 Definitions; Specific Exemptions.

##### (1) DEFINITIONS.

(a) "Alcohol" means completely denatured ethanol (ethyl alcohol) or methanol (wood alcohol) ~~of not less than 198 proof,~~ derived from grain, agricultural products, wood, coal, or other products, other than petroleum or natural gas, ~~with a ninety-nine percent (99%) purity,~~ manufactured, produced, sold or purchased for the purpose of blending with gasoline, or for 100 percent alcohol fuel used in motor vehicles. Alcohol, when used in motor vehicles, is a motor fuel subject to all of the provisions of Section 206.41, F.S.

(b) through (c) No change.

(d) "Fuel" means all fuels as defined in Chapter 206, F.S., and this rule chapter, including fuel grade ethanol, manufactured, produced, sold, or purchased for use as a gasoline blending component, or for use in a motor vehicle except as clearly indicated in this rule chapter.

(e) "Fuel grade ethanol" means ethanol blended with no less than one percent (1%) gasoline.

~~(f)(e)~~ "Gasohol" means and includes what is commonly known and sold as ethanol alcohol blended fuel, which contains not more than ninety-one percent (91%) gasoline by volume, and the ethanol content must not be less than nine percent (9%) by volume ~~ninety percent (90%) gasoline and ten percent (10%) ethyl alcohol a minimum of 198 proof, as long as the gasoline component complies with current state specifications or until the American Society for Testing and Materials (A.S.T.M.) approves specifications for gasohol.~~

(f) through (j) Renumbered (g) through (k) No change.

(2) No change.

Specific Authority 206.14(1), 206.59(1), 206.62(10), 206.87(1)(e)2., 213.06(1), 526.206 FS. Law Implemented 206.41(4)(b), 206.62, 206.874, 206.97, 526.203 FS. History—New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06,\_\_\_\_\_.

12B-5.121 Temporary Licenses Issued Under a Declared Emergency.

(1) GENERAL INFORMATION. The Department is authorized to grant the following temporary licenses to import into, export from, or transport fuel within Florida when the Governor of Florida has declared a state of emergency pursuant to Section 252.36, F.S., or when the President of the United States has declared a major disaster in Florida, another state, territory of the United States, or the District of Columbia:

(a) A temporary license as an importer or exporter of fuel to any person who holds a valid Florida fuel license as a wholesaler or to an unlicensed dealer; or

(b) A temporary license as a carrier to any person who holds a valid Florida license as a wholesaler, importer, exporter, or blender or to an unlicensed dealer.

(2) LICENSING.

(a) Temporary Importer, Exporter, or Carrier Licenses. Temporary licenses to import into, export from, or transport fuel within Florida will only be granted to:

1. A business with a physical location in Florida that holds a valid Florida Sales and Use Tax certificate of registration; or

2. Any person who holds a valid fuel license issued by another state.

(b) To obtain the temporary Florida fuel license, the person engaging temporarily in business as an importer, exporter, or carrier must file a Florida Temporary Fuel Tax License Application (Form DR-156T, incorporated by reference in Rule 12B-5.150, F.A.C.) with the Department, as provided in the application. A copy of the completed Form DR-156T is to be faxed to the phone number indicated in the application, and the original application is to be mailed to the address indicated in the application. Form DR-156T may be obtained, without cost, from the Department's Internet site at [www.myflorida.com/dor/forms/](http://www.myflorida.com/dor/forms/) or by calling the Department's Distribution Center at (850)922-2208. Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331 or (850)922-1115.

(c) No licensing fee is required to obtain a temporary fuel license. No criminal background investigation of an applicant will be conducted.

(d) The effective date of the Florida temporary fuel license is the date the application is received by the Department or, when the application is not faxed or otherwise submitted electronically to the Department, the postmark date of the application. Temporary license holders are authorized to import, export, or transport fuel within Florida on the effective date of the temporary license issued by the Department.

(e) Duration of Temporary Fuel Licenses.

1. A temporary importer, temporary exporter, or temporary carrier license expires on the last day of the month following the month in which the temporary license is issued. For example, the Department issues a temporary importer license effective July 15. The temporary license expires at midnight, August 31.

2. Any person who holds a temporary importer, temporary exporter, or temporary carrier license may request that the expiration date of the temporary license be extended during the declared state of emergency or major disaster. No extension of a temporary fuel license will be granted to any temporary licensee who has failed to file the required returns or to remit fuel taxes due to the Department.

3. To obtain an extension of the expiration date of the license, the license holder must fax or mail a written request for a one-month extension of the expiration date of the license to the Department. The written request must be faxed or postmarked on or before the expiration date of the current temporary license to:

Account Management – Fuel Unit  
Florida Department of Revenue  
P. O. Box 6480  
Tallahassee FL 32314-6480  
Fax Number: (850)922-5938

4. The Department will grant an extension of the expiration date of a temporary exporter, temporary importer, or temporary carrier license on a month-to-month basis. The extension of the expiration date will become effective on the first day of the next calendar month after receiving the written request and will expire at midnight on the last day of that month.

5. For example, the Governor of Florida declares a state of emergency on June 5, and a dealer who holds a valid fuel license issued by the State of Georgia wants to transport fuel into Florida. The Georgia fuel dealer faxes a completed Florida Temporary Fuel Tax Application (Form DR-156T) to the Department on June 6. On that date, the Department issues the Georgia dealer a temporary importer license authorizing the dealer to transport fuel into Florida. The Florida temporary fuel license will expire at midnight, July 31. On July 28, the declared state of emergency remains in effect, and the temporary importer faxes a written request to the Department to obtain an extension of the expiration date. The Department will grant an extension of the temporary license's expiration date that will remain in effect until midnight, August 31.

(3) TEMPORARY IMPORTERS, EXPORTERS, OR CARRIERS.

(a) Dealers who hold temporary fuel licenses must provide the assigned temporary importer or temporary exporter license number to any licensed carrier who transports fuel into Florida and record the temporary fuel license number on all shipping documents provided to the carrier.

(b) Temporary Importers.

### 1. Sales of Gasoline Products.

a. Florida fuel tax is due on gasoline and gasohol purchased by temporary importers from terminals located outside Florida and destined for sale in Florida.

b. Temporary importers must collect and remit to the Department the total Florida fuel tax imposed on each gallon of gasoline products sold to retail dealers and end users in Florida on fuel purchased from out-of-state fuel dealers who do not hold a Florida fuel license. Tax is due at the total tax rate imposed by the county where the gasoline product is sold when no Florida fuel tax has been collected or paid on the gasoline products sold.

c. Temporary importers must collect and remit to the Department any additional local option fuel tax due that was not collected by the terminal supplier on sales of gasoline and gasohol in Florida when the Florida statewide fuel taxes have been paid to an out-of-state terminal supplier. Only the local option tax above the minimum rate collected by terminal suppliers is required to be paid to the Department by licensed temporary importers upon each gallon of gasoline product sold in Florida.

### 2. Sales of Diesel Products.

a. Temporary importers must collect and remit the total statewide fuel taxes for undyed diesel fuel sold when no Florida fuel tax has been collected or paid on the undyed diesel products.

b. No additional fuel tax is due on sales of undyed diesel in Florida when the Florida fuel taxes have been paid to an out-of-state terminal supplier who holds a valid Florida fuel license.

### 3. Sales of Aviation Fuel.

a. Temporary importers must collect and remit the tax directly to the Department on sales of aviation fuel in Florida when the Florida 6.9 cents per gallon aviation fuel tax has not been collected by an out-of-state fuel supplier.

b. No additional aviation fuel tax is due on sales of aviation fuel in Florida when the Florida 6.9 cents per gallon aviation fuel tax has been paid to an out-of-state terminal supplier who holds a valid Florida fuel license.

4. Florida fuel tax rates by county may be found at the Department's Internet site at <http://dor.myflorida.com/dor/taxes>.

### (c) Temporary Exporters.

1. Temporary exporters who purchase taxable fuel in Florida during a declared emergency or disaster are required to pay the fuel taxes due to licensed terminal suppliers at the fuel tax rate imposed in the state to which the fuel is destined for sale or use. For example, a fuel distributor licensed in Georgia obtains a temporary exporter's license in Florida during a declared emergency in Georgia. When the temporary exporter purchases taxable fuel at a Florida terminal supplier for export to Georgia, the Florida terminal supplier is required to collect and remit fuel tax due at the rate imposed on the fuel in Georgia.

2.a. Temporary exporters who purchase taxable fuel in Florida during a declared state of emergency or major disaster from any person who does not hold a valid Florida fuel license as a terminal supplier are required to pay the fuel taxes imposed by Sections 206.41, 206.87, and 206.9825, F.S., to their Florida licensed suppliers or directly to the Department when purchased from an unlicensed supplier.

b. Temporary exporters who export fuel to other states on which Florida tax has been paid may obtain a refund of Florida taxes paid. To receive a refund of Florida tax paid, an exporter must file an Application for Refund (Form DR-26, incorporated by reference in Rule 12-26.008, F.A.C.) with the Department. Form DR-26 must be filed in accordance with the timing provisions of Section 215.26(2), F.S., and must meet the requirements of Sections 213.255(2) and (3), F.S. Form DR-26 must be filed with the Department within three (3) years after the date the tax was paid.

c. Copies of invoices for purchases and sales of fuel exported outside Florida and copies of the tax returns filed in the state of destination are required to be submitted with the application for refund.

### (d) Temporary Carriers.

1. Carriers who are not licensed to transport fuel in Florida, prior to a declared emergency or disaster, are required to obtain a temporary carrier license to transport fuel within Florida during a declared emergency or disaster.

2. Carriers who do not hold a valid Florida fuel license or a Florida temporary importer or temporary exporter license are prohibited from transporting fuel in Florida that is owned by the carrier.

### (4) EXEMPT SALES.

(a) Fuel sold by a temporary importer to the United States government, its departments, or its agencies in quantities of 500 gallons or more in each delivery, for exclusive use in equipment, devices, or motors operated by the United States, is exempt from tax. This exemption does not apply to sales of fuel delivered to service stations or other outlets for resale.

(b) Dyed diesel fuel sold by a temporary importer is exempt from the fuel taxes imposed under Section 206.87(1), F.S., but is subject to sales tax imposed under Section 212.0501, F.S.

(c) Undyed diesel fuel sold by a temporary importer to a farmer for use in farm equipment on a farm is exempt from the fuel tax imposed under Section 206.87(1), F.S. To sell such fuel tax-exempt, the temporary importer must obtain a written certification from the farmer certifying that the identified number of gallons of undyed diesel fuel will be used exclusively in agricultural equipment on a farm. Temporary importers are required to collect all taxes imposed under Section 206.87(1), F.S., on undyed diesel sold to farmers for nonagricultural use.

(5) TAXABLE SALES. Temporary importers are required to collect the following taxes:

(a) The taxes imposed by Section 206.41(1), F.S., on all nontaxed sales, deliveries, or consignments of motor fuel to retail dealers, resellers, and end users;

(b) The taxes imposed by Section 206.87(1), F.S., on all nontaxed sales, deliveries, or consignments of undyed diesel fuel to retail dealers, resellers, and end users.

(c) The tax imposed by Section 206.9825(1), F.S., on all nontaxed sales, deliveries, or consignments of aviation fuel to retail dealers, resellers, and end users.

(6) RETURNS.

(a) Return Due Dates.

1. Returns to report taxes imposed under Chapter 206, F.S., and information returns are due to the Department on or before the 20th day of each month for transactions occurring during the previous month. If the 20th day falls on a Saturday, Sunday, or legal holiday, payments accompanied by returns will be accepted as timely if postmarked or delivered to the Department on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

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

(b) Wholesaler/Importer Fuel Tax Return.

1. All temporary importers, who sell gasoline, gasohol, diesel, undyed diesel, and aviation fuel, are required to report all taxes imposed by Chapter 206, F.S., on a Wholesaler/Importer Fuel Tax Return (Form DR-309632, incorporated by reference in Rule 12B-5.150, F.A.C.) on or before the 20th day of each month for transactions occurring during the previous month.

2. A collection allowance deduction (found on the return) is authorized to temporary importers from the taxes collected under Sections 206.41(1)(a), (b), (c), and (g), and 206.9825(1), F.S., on sales of motor fuel and aviation fuel when 50 percent of the allowable deduction is granted to a purchaser with a valid wholesaler or terminal supplier license, and only when the return and payment are remitted timely.

3. A .67 percent (.0067) collection allowance deduction is authorized from taxes collected under Section 206.87(1)(a) and (e), F.S., to temporary importers on sales of diesel fuel when 50 percent of the allowable deduction is granted to a purchaser with a valid wholesaler or terminal supplier license, and only when the return and payment are remitted timely.

4. In addition to the collection allowance deductions authorized in subparagraphs 2. and 3., temporary importers who sell gasoline, gasohol, and undyed diesel to retail dealers or end-users may take a deduction of 1.1 percent (.011) of taxes

collected under Sections 206.41(1)(d), (e), and (f) and 206.87(1)(b), (c), and (d), F.S., only when the return and payment are remitted timely.

(b) Exporter Fuel Tax Return. Temporary exporters of gasoline, gasohol, diesel, undyed diesel, and aviation fuel are required to report all gallons of fuel exported from Florida on an Exporter Fuel Tax Return (Form DR-309638, incorporated by reference in Rule 12B-5.150, F.A.C.).

(c) Carrier Information Return. Temporary exporters of gasoline, gasohol, diesel, undyed diesel, and aviation fuel are required to report all gallons of fuel exported from Florida on an Exporter Fuel Tax Return (Form DR-309637, incorporated by reference in Rule 12B-5.150, F.A.C.).

(7) REFUNDS AND CREDITS.

(a) Temporary importers that sell fuel to the United States government or its agencies in bulk lots of not less than 500 gallons in each delivery exempt from taxes imposed under Sections 206.41 and 206.87, F.S., may obtain an ultimate vendor credit for the taxes paid when their Wholesaler/Importer Fuel Tax returns (Form DR-309632) are filed.

(b) Temporary importers that sell undyed diesel fuel to farmers for agricultural purposes tax exempt, from taxes imposed under Section 206.87, F.S., may obtain an ultimate vendor credit for the taxes paid when their Wholesaler/Importer Fuel Tax Returns (Form DR-309632) are filed.

(c)1. Instead of taking ultimate vendor credits on their fuel tax returns, temporary importers may obtain a refund of fuel taxes paid on sales of gasoline, gasohol, undyed diesel, and aviation fuel sold for exempt purposes.

2. To receive a refund of Florida tax paid, a temporary importer must file an Application for Refund (Form DR-26, incorporated by reference in Rule 12-26.008, F.A.C.) with the Department. Form DR-26 must be filed in accordance with the timing provisions of Section 215.26(2), F.S., and must meet the requirements of Sections 213.255(2) and (3), F.S. Form DR-26 must be filed with the Department within three (3) years after the date the tax was paid.

3. Copies of invoices showing the amount of taxes paid must be submitted with the application for refund.

Specific Authority 206.14(1), 206.59(1) FS, Law Implemented 206.02(8), 206.021(5), 206.051(4), 206.052, 206.41(1), 206.43(1), 206.87(1), 206.8745, 206.99825(1)(a), 213.255(2), (3), 215.26(2) FS, History—New \_\_\_\_\_.

12B-5.130 Refunds.

(1) FUEL USED FOR AGRICULTURAL, AQUACULTURAL, ~~AND~~ COMMERCIAL FISHING, AND COMMERCIAL AVIATION PURPOSES.

(a)1. through 2. No change.

3. Any person who purchases motor fuel for use in the operation of aviation ground support vehicles or equipment may obtain a refund of local option, state comprehensive enhanced transportation system, and fuel sales taxes paid under Sections 206.41(1)(e), (f), and (g), F.S. Motor fuel used in aviation ground support vehicles or equipment that is driven or operated upon the public highways of this state will not qualify for the refund.

(b) Prior to qualifying for a refund of taxes paid on motor fuel used for agricultural, aquacultural, ~~and~~ commercial fishing, and commercial aviation purposes, every person is required to file an Application for Fuel Tax Refund Permit (Form DR-185, incorporated by reference in Rule 12B-5.150, F.A.C.) with the Department and obtain a Fuel Tax Refund Permit (Form DR-192, incorporated by reference in Rule 12B-5.150, F.A.C.).

(c) Persons seeking a refund of taxes paid on motor fuel for agricultural, aquacultural, ~~and~~ commercial fishing, and commercial aviation purposes must file an Application for Fuel Tax Refund-Agricultural, Aquacultural, ~~and~~ Commercial Fishing, and Commercial Aviation Purposes (Form DR-138, incorporated by reference in Rule 12B-5.150, F.A.C.) with the Department. Form DR-138 must be filed for each calendar quarter no later than the last day of the month immediately following the calendar quarter for which the refund is claimed. The filing date may be extended one additional month when a written explanation that sets forth reasonable cause for delay in filing the refund application is submitted with the application and the prior quarter's refund application was timely submitted to the Department.

(2) through (5) No change.

Specific Authority 206.14(1), 206.59(1), 206.8745(6), 213.06(1) FS. Law Implemented 206.41(4), (5), 206.43(5), (6), 206.64, 206.8745, 206.97 FS. History--New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06, 1-27-09,\_\_\_\_\_.

12B-5.150 Public Use Forms.

(1)(a) The following public use forms and instructions are utilized by the Department and are hereby incorporated by reference in this rule.

(b) No change.

Form Number	Title	Effective Date
(2) through (4)	No change.	
(5) DR-156T	Florida Temporary Fuel Tax Application (R. 01/09)	_____

(5) through (39) renumbered (6) through (40) No change.

Specific Authority 206.14(1), 206.59(1), 206.8745(6), 213.06(1), 526.206 FS. Law Implemented 206.02, 206.021, 206.022, 206.025, 206.026, 206.027, 206.028, 206.05, 206.055, 206.095, 206.404, 206.43, 206.86, 206.877, 206.90, 206.91, 206.92, 206.9931, 206.9943, 526.203 FS. History--New 11-21-96, Amended 10-27-98, 5-1-06, 4-16-07, 1-1-08, 1-27-09,\_\_\_\_\_.

PART IV TAX ON POLLUTANTS

12B-5.401 Temporary Pollutant Importer License Issued Under a Declared Emergency.

(1) GENERAL INFORMATION. When the Governor of Florida has declared a state of emergency pursuant to Section 252.36, F.S., or when the President of the United States has declared a major disaster in Florida, another state, territory of the United States, or the District of Columbia, gasoline, gasohol, diesel, and aviation fuel imported into Florida is subject to the Florida pollutant tax. Any person who imports fuels subject to the Florida pollutant tax is required to hold a valid Florida pollutant license issued by the Department.

(2) LICENSING

(a) The Department will grant a temporary pollutant license to import pollutants into Florida when the Governor of Florida has declared a state of emergency pursuant to Section 252.36, F.S., or when the President of the United States has declared a major disaster in Florida, another state, territory of the United States, or the District of Columbia to those persons who are granted a Florida temporary importer or temporary exporter license, as provided in Rule 12B-5.121, F.A.C.

(b) The application submitted to the Department to obtain a Florida temporary fuel license, as provided in Rule 12B-5.121, F.A.C., is sufficient to obtain a Florida temporary pollutant license. No additional application is required.

(c) The effective date of the Florida temporary pollutant license is the same date as the effective date of the temporary importer or temporary exporter license. The effective date of the temporary pollutant license is the date the application for a temporary fuel license is received by the Department or, when the application is not faxed or otherwise submitted electronically to the Department, the postmark date of the application.

(d) Duration of Temporary Pollutant Importer License.

1. A temporary pollutant importer license expires on the last day of the month following the month in which the temporary pollutant importer license is issued. For example, a person is issued a Florida temporary pollutant importer license effective July 15. The temporary importer license and the temporary pollutant importer license expire on August 31, at midnight.

2. A temporary pollutant importer license will be extended automatically when the temporary fuel license is extended. A temporary pollutant importer license will remain in effect for the period a temporary importer or exporter license is effective. No extension of a Florida temporary fuel or pollutant license will be granted to any temporary licensee who has failed to file required returns or to remit the fuels taxes, or the pollutant taxes, due to the Department.

(3) TEMPORARY POLLUTANT IMPORTERS.

(a) The Florida pollutant tax accrues at the time of importation of motor, diesel, and aviation fuels into Florida.



(b) Dealers who hold temporary pollutant importer licenses are required to provide the assigned temporary pollutant license number to the licensed carrier that will transport fuel in Florida and record the temporary fuel license number on all shipping documents provided to the carrier.

(c) Holders of temporary pollutant importer licenses are required to pay the Florida pollutant taxes due to the Department when gasoline, gasohol, diesel, and aviation fuel is imported into Florida and the Florida pollutant taxes due have not been paid to an out-of-state dealer who holds a valid Florida pollutant license. Tax is due at the pollutant tax rates provided in subsection (5) of Rule 12B-5.400, F.A.C.

(d) When the Florida pollutant tax is paid to an out-of-state dealer who holds a valid Florida pollutant license, no additional Florida pollutant tax is due.

(4) EXEMPT SALES. Petroleum products bunkered into marine vessels engaged in interstate or foreign commerce by a temporary pollutants importer are exempt from the Water Quality and the Inland Protection pollutant taxes.

(5) TAXABLE SALES. Temporary pollutants importers are required to pay to the Department the Florida pollutant taxes imposed under Sections 206.9935(1), (2), and (3), F.S., on all taxable sales of fuel to Florida customers for which the Florida pollutant taxes were not collected at the time of purchase.

(6) RETURNS. A temporary pollutant importer must file a Pollutants Tax Return (Form DR-904, incorporated by reference in Rule 12B-5.150, F.A.C.) on or before the 20th day of the month following the month of sale. If the 20th day falls on a Saturday, Sunday, or legal holiday, payments accompanied by returns will be accepted as timely if postmarked or delivered to the Department on the next succeeding day that is not a Saturday, Sunday, or legal holiday. For the purpose of this rule, a legal holiday means a holiday that is observed by federal or state agencies as this term is defined in Chapter 683, F.S., and s. 7503 of the Internal Revenue Code of 1986, as amended. A "legal holiday" pursuant to s. 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

(7) REFUNDS AND CREDITS. A temporary pollutant importer that is entitled to a refund of pollutant taxes pursuant to Section 206.9942, F.S., is required to file a quarterly Application for Pollutants Tax Refund (Form DR-309660, incorporated by reference in Rule 12B-5.150, F.A.C.), as provided in subsection (7) of Rule 12B-5.400, F.A.C.

Specific Authority 206.14(1), 206.59(1) FS. Law Implemented 206.9925, 206.9931(2), 206.9942, 206.9943(4) FS. History—New

NAME OF PERSON ORIGINATING PROPOSED RULE: Ronald Gay, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4732

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor Charlie Crist and members of the Florida Cabinet, Attorney General Bill McCollum, Chief Financial Officer Alex Sink, and Agriculture Commissioner Charles H. Bronson, as agency head of the Department of Revenue

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 27, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development Workshop was published in the Florida Administrative Weekly on November 21, 2008 (Vol. 34, No. 47, pp. 6076-6077). A rule development workshop was conducted on December 9, 2008. No comments were received by the Department.

**DEPARTMENT OF REVENUE**

**Miscellaneous Tax**

RULE NOS.:	RULE TITLES:
12B-5.030	Importers
12B-5.040	Carriers
12B-5.050	Terminal Suppliers
12B-5.060	Wholesalers
12B-5.070	Terminal Operators
12B-5.080	Exporters
12B-5.090	Local Government Users
12B-5.100	Mass Transit Systems
12B-5.110	Blenders
12B-5.150	Public Use Forms
12B-5.400	Producers and Importers of Pollutants

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule Chapter 12B-5, F.A.C. (Tax on Motor Fuels, Diesel Fuels, Alternative Fuels, Aviation Fuels, and Pollutants), is to: (1) impose the electronic reporting and filing requirements authorized in Section 206.485, F.S., on fuel dealers who hold licenses as importers, petroleum carriers, terminal suppliers, wholesalers, terminal operators, exporters, and blenders; (2) change the method by which terminal suppliers and terminal operators are required to electronically submit their returns and information reports to the Department; (3) clarify the due dates for tax returns and information reports submitted electronically, for tax returns submitted with payments electronically, and for paper returns filed with the Department; and (4) adopt changes to fuel tax and pollutant tax returns and information reports that simplify and clarify instructions, designate each form as a 2009 form, and include the 2009 fuel tax rates.

When effective, the proposed amendments will require importers, carriers, terminal suppliers, terminal operators, exporters, and blenders to enroll in the Department's e-Services Program to make payments and submit their tax returns or information reports electronically when obtaining a Florida fuel license. Terminal suppliers and terminal operators will be required to submit their returns by electronic data interchange, as provided in the Florida Department of Revenue Motor Fuels Technical Implementation Guide – ANSI ASC X12 V.4030. Other fuel licensees may select from the methods available to submit their tax returns electronically. The ability for the Department to grant waivers on a case-by-case basis from electronic filing requirements is preserved to ensure that fuel licensees who are unable to comply with these requirements are not impacted.

**SUMMARY:** The proposed amendments to Rule 12B-5.030, F.A.C. (Importers), provide: (1) that any person seeking a Florida fuel license as an importer is required to enroll in the Department's e-Services program to file returns and to make tax payments electronically; (2) how importers who are not able to comply with the electronic filing requirements may obtain a waiver from the electronic filing requirement; and (3) that electronic payments are to be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C.

The proposed amendments to Rule 12B-5.040, F.A.C. (Carriers), provide: (1) that any person seeking a Florida fuel license as a carrier is required to enroll in the Department's e-Services program to file returns and to make tax payments electronically; (2) how carriers who are not able to comply with the electronic filing requirements may obtain a waiver from the electronic filing requirement; and (3) when electronic information returns are due to the Department and when hard-copy returns are due by carriers who are authorized to submit hard-copy returns to the Department.

The proposed amendments to Rule 12B-5.050, F.A.C. (Terminal Suppliers), provide: (1) that any person seeking a Florida fuel license as a terminal supplier is required to enroll in the Department's e-Services program to file returns and to make tax payments electronically; (2) how terminal suppliers who are not able to comply with the electronic filing requirements may obtain a waiver from the electronic filing requirement; (3) that terminal suppliers must submit electronic returns by electronic data interchange, as provided in the Florida Department of Revenue Motor Fuels Technical Implementation Guide - ANSI ASC X12 V.4030; and (4) that electronic payments are to be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C.

The proposed amendments to Rule 12B-5.060, F.A.C. (Wholesalers), provide: (1) that any person seeking a Florida fuel license as a wholesaler is required to enroll in the Department's e-Services program to file returns and to make tax payments electronically; (2) how wholesalers who are not able to comply with the electronic filing requirements may

obtain a waiver from the electronic filing requirement; and (3) when electronic information returns are due to the Department and when hard-copy returns are due by wholesalers who are authorized to submit hard-copy returns to the Department.

The proposed amendments to Rule 12B-5.070, F.A.C. (Terminal Operators), provide: (1) that any person seeking a Florida fuel license as a terminal operator is required to enroll in the Department's e-Services program to file information returns; (2) how terminal operators who are not able to comply with the electronic filing requirements may obtain a waiver from the electronic filing requirement; and (3) that terminal operators must submit electronic information returns by electronic data interchange, as provided in the Florida Department of Revenue Motor Fuels Technical Implementation Guide – ANSI ASC X12 V.4030.

The proposed amendments to Rule 12B-5.080, F.A.C. (Exporters), provide: (1) that any person seeking a Florida fuel license as an exporter is required to enroll in the Department's e-Services program to file returns and to make tax payments electronically; (2) how exporters who are not able to comply with the electronic filing requirements may obtain a waiver from the electronic filing requirement; (3) when electronic tax returns are due to the Department and when hard-copy returns are due by exporters who are authorized to submit hard-copy returns to the Department; and (4) that electronic payments are to be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C.

The proposed amendments to Rule 12B-5.090, F.A.C. (Local Government Users), and to Rule 12B-5.100, F.A.C. (Mass Transit Systems), provide: (1) when electronic tax returns are due to the Department; and (2) that electronic payments are to be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C.

The proposed amendments to Rule 12B-5.110, F.A.C. (Blenders), provide: (1) that any person seeking a Florida fuel license as a blender is required to enroll in the Department's e-Services program to file returns and to make tax payments electronically; (2) how blenders who are not able to comply with the electronic filing requirements may obtain a waiver from the electronic filing requirement; (3) when electronic tax returns are due to the Department and when hard-copy returns are due by blenders who are authorized to submit hard-copy returns to the Department; and (4) that electronic payments are to be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C.

The proposed amendments to Rule 12B-5.150, F.A.C. (Public Use Forms), adopt, by reference: (1) changes to fuel tax and pollutant tax returns and information reports that simplify and clarify instructions, designating each form as a 2009 form, and including the 2009 fuel tax rates; and (2) the new instructions for filing returns by electronic data interchange contained in the Motor Fuels Technical Implementation Guide ANSI ASC X12 V.4030.

The proposed amendments to Rule 12B-5.400, F.A.C. (Producers and Importers of Pollutants), provide that electronic payments are to be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

SPECIFIC AUTHORITY: 206.14(1), 206.485(1), 206.59(1), 206.87(1)(e)2., 206.97, 206.9915, 213.06(1), 213.755(8) FS.

LAW IMPLEMENTED: 206.01, 206.02, 206.021, 206.022, 206.025, 206.026, 206.027, 206.028, 206.03, 206.04, 206.05, 206.051, 206.052, 206.054, 206.055, 206.09, 206.095, 206.199, 206.20, 206.204, 206.205, 206.404, 206.41, 206.413, 206.414, 206.416, 206.43, 206.48, 206.485, 206.62, 206.86, 206.87, 206.872, 206.873, 206.874, 206.8745, 206.877, 206.89, 206.90, 206.91, 206.92, 206.97, 206.9815, 206.9825, 206.9835, 206.9915, 206.9925, 206.9931, 206.9935, 206.9941, 206.9942, 206.9943, 206.9835, 213.755 FS.

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

DATE AND TIME: March 2, 2009, 10:00 a.m.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Larry Green at (850)922-4830. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

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

THE FULL TEXT OF THE PROPOSED RULES IS:

PART I TAX ON MOTOR AND DIESEL FUEL

12B-5.030 Importers.

(1) No change.

(2) LICENSING AND BONDING.

(a) Licensing.

1. To obtain an annual license as an importer, every person must file Form DR-156, Florida Fuel Tax Application (incorporated by reference in Rule 12B-5.150, F.A.C.), with

~~and~~ the required attachments, with the Department, as provided in the application, and enroll in the Department's e-Services Program.

2. To enroll in the e-Services Program to make payments and submit returns electronically to the Department, the importer must:

a. Complete enrollment on the Department's Internet site at [myflorida.com/dor/e-services](http://myflorida.com/dor/e-services); or

b. Complete Form DR-600, Enrollment and Authorization for e-Services Program (incorporated by reference in Rule 12-24.011, F.A.C.), as provided in Rule 12-24.004, F.A.C., and return it to the Department, if the importer is unable to use the Department's Internet site to enroll.

3. Importers who can establish that they are unable to comply with the electronic payment and electronic filing requirements must complete and submit Form DR-654, Request for Waiver From Electronic Filing (incorporated by reference in Rule 12-24.011, F.A.C.) to establish in writing the basis for the requested waiver, as provided in Rule 12-24.010, F.A.C.

4. Forms DR-600 and DR-654 may be obtained from the Department by: 1) calling the Department at (800)352-3671, Monday through Friday, 8:00 a.m. to 7:00 p.m., Eastern Time; or, 2) visiting any local Department of Revenue Service Center. Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331 or (850)922-1115.

2. through 3. renumbered 5. through 6. No change.

(b) No change.

(3) RETURNS AND PAYMENTS.

(a) Returns. Licensed importers of gasoline, gasohol, diesel, or aviation fuel are required to report all taxes imposed by Chapter 206, F.S., on a Wholesaler/Importer Fuel Tax Return (Form DR-309632, incorporated by reference in Rule 12B-5.150, F.A.C.), as provided in subsection (5) of Rule 12B-5.060, F.A.C.

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

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

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

~~3. No tax is due with a return for reporting tax; or~~

~~4. Any information report is required to be submitted by electronic means.~~

(4) through (5) No change.

Specific Authority 206.14(1), 206.485(1), 206.59(1), 206.87(1)(e)2., 213.06(1), 213.755(8) FS. Law Implemented 206.01(3), 206.02, 206.026, 206.027, 206.028, 206.03, 206.05, 206.051, 206.054, 206.43, 206.48(2), 206.485, 206.9835, 213.755 FS. History—New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06, \_\_\_\_\_.

12B-5.040 Carriers.

(1) LICENSING.

(a) No change.

(b) 1. To obtain an annual license, every person must file a Florida Fuel Tax Application (Form DR-156, incorporated by reference in Rule 12B-5.150, F.A.C.), with and the required attachments, with the Department, as provided in the application, and enroll in the Department's e-Services Program.

2. To enroll in the e-Services Program to submit returns electronically to the Department, the carrier must:

a. Complete enrollment on the Department's Internet site at [myflorida.com/dor/e-services](http://myflorida.com/dor/e-services); or,

b. Complete Form DR-600, Enrollment and Authorization for e-Services Program (incorporated by reference in Rule 12-24.011, F.A.C.), as provided in Rule 12-24.004, F.A.C., and return it to the Department, if the carrier is unable to use the Department's Internet site to enroll.

3. Carriers who can establish that they are unable to comply with the electronic filing requirements must complete and submit Form DR-654, Request for Waiver From Electronic Filing (incorporated by reference in Rule 12-24.011, F.A.C.), to establish in writing the basis for the requested waiver, as provided in Rule 12-24.010, F.A.C.

4. Form DR-654 may be obtained from the Department by: 1) calling the Department at (800)352-3671, Monday through Friday, 8:00 a.m. to 7:00 p.m., Eastern Time; or, 2) visiting any local Department of Revenue Service Center. Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331 or (850)922-1115.

(c) through (d) No change.

(2) INFORMATION RETURNS.

(~~a~~) Carriers are required to file Form DR-309637, Petroleum Carrier Information Return (incorporated by reference in Rule 12B-5.150, F.A.C.), electronically with the Department, as provided in Rule Chapter 12-24, F.A.C. The electronic return must be filed on or before the 20th day of each month for the activity during the previous month. To be timely, the electronic return must be initiated and a confirmation from the Department must be received before 5:00 p.m., Eastern Time, on or before the 20th day of each month. For carriers who are authorized to submit Form DR-309637 by hard copy, the return will be accepted as timely if postmarked or delivered to the Department on or before the 20th day of each month. If the 20th day falls on a Saturday, Sunday, or legal holiday, returns will be accepted as timely if a confirmation for an electronic return is received by the Department on or before 5:00 p.m., Eastern Time, or a hard-copy return, when permitted, is postmarked or delivered to the Department on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For the purpose of this rule, a legal holiday means a holiday that is observed by federal or state agencies as a legal holiday as this term is defined in

Chapter 683, F.S., and Section 7503 of the Internal Revenue Code of 1986, as amended. A "legal holiday" pursuant to Section 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

~~(b) Electronic filing of information reports must be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C.~~

(3) No change.

Specific Authority 206.14(1), 206.485(1), 206.59(1), 206.97, 206.9915, 213.06(1), 213.755(8) FS. Law Implemented 206.021, 206.09, 206.199, 206.20, 206.204, 206.205, 206.485, 213.755 FS. History—New 7-1-96, Amended 11-21-96, 5-1-06,\_\_\_\_\_.

12B-5.050 Terminal Suppliers.

(1) No change.

(2) LICENSING AND BONDING.

(a) Licensing.

1. No change.

2. To obtain an annual license as a terminal supplier, every person must file a Florida Fuel Tax Application (Form DR-156, incorporated by reference in Rule 12B-5.150, F.A.C.), with and the required attachments, with the Department, as provided in the application, and enroll in the Department's e-Services Program.

2. To enroll in the e-Services Program to make payments and submit returns electronically to the Department, the terminal supplier must:

a. Complete enrollment on the Department's Internet site at [myflorida.com/dor/e-services](http://myflorida.com/dor/e-services); or,

b. Complete Form DR-600, Enrollment and Authorization for e-Services Program (incorporated by reference in Rule 12-24.011, F.A.C.), as provided in Rule 12-24.004, F.A.C., and return it to the Department, if the terminal supplier is unable to use the Department's Internet site to enroll.

3. Terminal suppliers who can establish that they are unable to comply with the electronic payment and electronic filing requirements must complete and submit Form DR-654, Request for Waiver From Electronic Filing (incorporated by reference in Rule 12-24.011, F.A.C.), to establish in writing the basis for the requested waiver, as provided in Rule 12-24.010, F.A.C.

4. Forms DR-600 and DR-654 may be obtained from the Department by: 1) calling the Department at (800)352-3671, Monday through Friday, 8:00 a.m. to 7:00 p.m., Eastern Time; or, 2) visiting any local Department of Revenue Service Center. Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331 or (850)922-1115.

3. through 5. renumbered 5. through 7. No change.

(b) No change.

(4) through (5) No change.

(5) RETURNS AND PAYMENTS.

(a) Returns. All terminal suppliers that sell gasoline, gasohol, diesel, or aviation fuel are required to report all taxes imposed by Chapter 206, F.S., on a Terminal Supplier Fuel Tax Return (Form DR-309631, incorporated by reference in Rule 12B-5.150, F.A.C.), electronically with the Department, as provided in Rule Chapter 12-24, F.A.C. The electronic return must be submitted by electronic data interchange, as provided in the Florida Department of Revenue Motor Fuels Technical Implementation Guide – ANSI ASC X12 V.4030 (incorporated by reference in Rule 12B-5.150, F.A.C.). The electronic return must be filed on or before the 20th day of each month for transactions occurring during the previous month. To be timely, the electronic return must be initiated and a confirmation from the Department must be received before 5:00 p.m., Eastern Time, on or before the 20th day of each month. For terminal suppliers who are authorized to submit Form DR-309631 by hard copy, the return will be accepted as timely if postmarked or delivered to the Department on or before the 20th day of each month. If the 20th day falls on a Saturday, Sunday, or legal holiday, payments accompanied by returns will be accepted as timely if a confirmation for an electronic return is received by the Department on or before 5:00 p.m., Eastern Time, or a hard-copy return, when permitted, is postmarked or delivered to the Department on the next succeeding day that which is not a Saturday, Sunday, or legal holiday. For the purpose of this rule, a legal holiday means a holiday which is observed by federal or state agencies as this term is defined in Chapter 683, F.S., and Section 7503 of the Internal Revenue Code of 1986, as amended. A “legal holiday” pursuant to Section 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

(b) Payments. Payments must be submitted to the Department electronically, as provided in Rule Chapter 12-24, F.A.C.

(c) Collection Allowance.

- ~~1. (b)1.~~ No change.
- 2. through 3. No change.

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

- ~~1. Payment of the tax is required to be made by electronic means;~~
- ~~2. Any return for reporting taxes is required to be submitted by electronic means;~~
- ~~3. No tax is due with a return for reporting tax; or~~
- ~~4. Any information report is required to be submitted by electronic means.~~
- (6) No change.

Specific Authority 206.14(1), 206.485(1), 206.59(1), 206.87(1)(e)2., 213.06(1), ~~213.755(8)~~ FS. Law Implemented 206.01, 206.02, 206.05, 206.41, 206.413, 206.414, 206.43, 206.48, 206.485, 206.62, 206.86, 206.87, 206.872, 206.873, 206.874, 206.8745, 206.90, 206.91, 206.97, 206.9815, 206.9941, 206.9942, ~~213.755~~ FS. History–New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06,\_\_\_\_\_.

12B-5.060 Wholesalers.

- (1) No change.
- (2) LICENSING AND BONDING.

(a)1. To obtain an annual license as a wholesaler a person must file a Florida Fuel Tax Application (Form DR-156, incorporated by reference in Rule 12B-5.150, F.A.C.), ~~with and~~ the required attachments, with the Department, as provided in the application, and enroll in the Department’s e-Services Program.

2. To enroll in the e-Services Program to make payments and submit returns electronically to the Department, the wholesaler must:

- a. Complete enrollment on the Department’s Internet site at [myflorida.com/dor/e-services](http://myflorida.com/dor/e-services); or,
- b. Complete Form DR-600, Enrollment and Authorization for e-Services Program (incorporated by reference in Rule 12-24.011, F.A.C.), as provided in Rule 12-24.004, F.A.C., and return it to the Department if the wholesaler is unable to use the Department’s Internet site to enroll.

3. Wholesalers who can establish that they are unable to comply with the electronic payment and electronic filing requirements must complete and submit Form DR-654, Request for Waiver From Electronic Filing (incorporated by reference in Rule 12-24.011, F.A.C.), to establish in writing the basis for the requested waiver, as provided in Rule 12-24.010, F.A.C.

4. Forms DR-600 and DR-654 may be obtained from the Department by: 1) calling the Department at (800)352-3671, Monday through Friday, 8:00 a.m. to 7:00 p.m., Eastern Time; or, 2) visiting any local Department of Revenue Service Center. Persons with hearing or speech impairments may call the Department’s TDD at (800)367-8331 or (850)922-1115.

- 2. through 3. renumbered 5. through 6. No change.
- (b) through (e) No change.
- (3) through (4) No change.
- (5) RETURNS AND PAYMENTS.

(a) Returns. All wholesalers who sell gasoline, gasohol, diesel, or aviation fuel are required to report all taxes imposed by Chapter 206, F.S., on a Wholesaler/Importer Fuel Tax Return (Form DR-309632, incorporated by reference in Rule 12B-5.150, F.A.C.), electronically with the Department, as provided in Rule Chapter 12-24, F.A.C. The electronic return must be filed on or before the 20th day of each month for transactions occurring during the previous month. To be timely, the electronic return must be initiated and a confirmation from the Department must be received before 5:00 p.m., Eastern Time, on or before the 20th day of each

month. For wholesalers who are authorized to submit Form DR-309632 by hard copy, the return will be accepted as timely if postmarked or delivered to the Department on or before the 20th day of each month. If the 20th day falls on a Saturday, Sunday, or legal holiday, ~~payments accompanied by~~ returns will be accepted as timely if a confirmation for an electronic return is received by the Department on or before 5:00 p.m., Eastern Time, or a hard-copy return, when permitted, is postmarked or delivered to the Department on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For the purpose of this rule, a legal holiday means a holiday that which is observed by federal or state agencies as this term is defined in Chapter 683, F.S., and Section 7503 of the Internal Revenue Code of 1986, as amended. A “legal holiday” pursuant to Section 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

(b) Payments. Payments must be submitted to the Department electronically, as provided in Rule Chapter 12-24, F.A.C.

(c) Collection Allowance.

1. ~~(b)~~ No change.

2. through 3. No change.

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

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

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

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

4. Any information report is required to be submitted by electronic means.

(6) No change.

Specific Authority 206.14(1), 206.485(1), 206.59(1), 206.97, 213.06(1), 213.755(8) FS. Law Implemented 206.01(6), 206.02, 206.05, 206.404, 206.43, 206.48, 206.485, 206.86, 206.89, 206.90, 206.91, 206.9825 213.755 FS. History—New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06,\_\_\_\_\_.

12B-5.070 Terminal Operators.

(1) LICENSING.

(a) No change.

(b) 1. To obtain an annual license as a terminal operator, a person must file a Florida Fuel Tax Application (Form DR-156, incorporated by reference in Rule 12B-5.150, F.A.C.), with ~~and~~ the required attachments, with the Department, as provided in the application, and enroll in the Department’s e-Services Program.

2. To enroll in the e-Services Program to submit returns electronically to the Department, the terminal operator must:

a. Complete enrollment on the Department’s Internet site at myflorida.com/dor/e-services; or,

b. Complete Form DR-600, Enrollment and Authorization for e-Services Program (incorporated by reference in Rule 12-24.011, F.A.C.), as provided in Rule 12-24.004, F.A.C., and return it to the Department, if the terminal operator is unable to use the Department’s Internet site to enroll.

3. Terminal operators who can establish that they are unable to comply with the electronic filing requirements must complete and submit Form DR-654, Request for Waiver From Electronic Filing (incorporated by reference in Rule 12-24.011, F.A.C.), to establish in writing the basis for the requested waiver, as provided in Rule 12-24.010, F.A.C.

4. Form DR-654 may be obtained from the Department by: 1) calling the Department at (800)352-3671, Monday through Friday, 8:00 a.m. to 7:00 p.m., Eastern Time; or, 2) visiting any local Department of Revenue Service Center. Persons with hearing or speech impairments may call the Department’s TDD at (800)367-8331 or (850)922-1115.

(c) through (d) No change.

(2) INFORMATION RETURNS.

(a) All terminal operators who operate terminals in this state are required to file a Terminal Operator Information Return (Form DR-309636, incorporated by reference in Rule 12B-5.150, F.A.C.), electronically with the Department, as provided in Rule Chapter 12-24, F.A.C. The electronic return must be submitted by electronic data interchange, as provided in the Florida Department of Revenue Motor Fuels Technical Implementation Guide – ANSI ASC X12 V.4030 (incorporated by reference in Rule 12B-5.150, F.A.C.). The electronic return must be filed on or before the 20th day of each month for transactions occurring during the previous month. A separate return is required for each terminal location. To be timely, the electronic return must be initiated and a confirmation from the Department must be received before 5:00 p.m., Eastern Time, on or before the 20th day of each month. For terminal operators who are authorized to submit Form DR-309636 by hard copy, the return will be accepted as timely if postmarked or delivered to the Department on or before the 20th day of each month. If the 20th day falls on a Saturday, Sunday, or legal holiday, returns will be accepted as timely if a confirmation for an electronic return is received by the Department on or before 5:00 p.m., Eastern Time, or a hard-copy return, when permitted, is postmarked or delivered to the Department on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For the purpose of this rule, a legal holiday will mean a holiday that which is observed by federal or state agencies as this term is defined in Chapter 683, F.S., and Section 7503 of the Internal Revenue Code of 1986, as amended. A “legal holiday” pursuant to Section 7503 of the Internal Revenue Code of 1986, as amended, means a legal

holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

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

Specific Authority 206.14(1), ~~206.485(1)~~, 206.59(1), 206.97, 213.06(1), ~~213.755(8)~~ FS. Law Implemented 206.01(19), 206.022, 206.095, 206.485, 206.872, ~~213.755~~ FS. History—New 7-1-96, Amended 11-21-96, 5-1-06, \_\_\_\_\_.

12B-5.080 Exporters.

(1) No change.

(2) LICENSING AND BONDING.

(a) Licensing.

1. through 2. No change.

(b)1. To obtain an annual license as an exporter, a person must file an ~~Application for~~ Florida Fuel Tax Application License (Form DR-156, incorporated by reference in Rule 12B-5.150, F.A.C.), ~~with and~~ the required attachments, with the Department, as provided in the application, ~~and enroll in the Department's e-Services Program.~~

2. To enroll in the e-Services Program to make payments and submit returns electronically to the Department, the exporter must:

a. Complete enrollment on the Department's Internet site at [myflorida.com/dor/e-services](http://myflorida.com/dor/e-services); or,

b. Complete Form DR-600, Enrollment and Authorization for e-Services Program (incorporated by reference in Rule 12-24.011, F.A.C.), as provided in Rule 12-24.004, F.A.C., and return it to the Department, if the exporter is unable to use the Department's Internet site to enroll.

3. Exporters who can establish that they are unable to comply with the electronic payment and electronic filing requirements must complete and submit Form DR-654, Request for Waiver From Electronic Filing (incorporated by reference in Rule 12-24.011, F.A.C.) to establish in writing the basis for the requested waiver, as provided in Rule 12-24.010, F.A.C.

4. Forms DR-600 and DR-654 may be obtained from the Department by: 1) calling the Department at (800)352-3671, Monday through Friday, 8:00 a.m. to 7:00 p.m., Eastern Time; or, 2) visiting any local Department of Revenue Service Center. Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331 or (850)922-1115.

2. through 3. renumbered 5. through 6. No change.

(c) No change.

(3) RETURNS AND PAYMENTS.

(a) Returns.

~~1.(a)~~ Licensed exporters of gasoline, gasohol, diesel, or aviation fuel are required to report all gallons of fuel exported from Florida on an Exporter Fuel Tax Return (Form DR-309638, incorporated by reference in Rule 12B-5.150,

F.A.C.). Licensed Exporters that are also licensed as wholesalers are required to report their export sales on a Wholesaler/Importer Fuel Tax Return (Form DR-309632, incorporated by reference in Rule 12B-5.150, F.A.C.).

~~2.(b)~~ Form DR-309638, Exporter Tax Return, and Form DR-309632, Wholesaler/Importer Fuel Tax Return, as applicable, must be filed electronically with the Department, as provided in Rule Chapter 12-24, F.A.C. The electronic returns must be filed on or before the 20th day of the month following a month in which export transactions occur. To be timely, the electronic return must be initiated and a confirmation from the Department must be received before 5:00 p.m., Eastern Time, on or before the 20th day of each month. For exporters who are authorized to submit Form DR-309638 or Form DR-309632 by hard copy, the return will be accepted as timely if postmarked or delivered to the Department on or before the 20th day of each month. If the 20th day falls on a Saturday, Sunday, or legal holiday, ~~payments accompanied by~~ returns will be accepted as timely if a confirmation for an electronic return is received by the Department on or before 5:00 p.m., Eastern Time, or a hard-copy return, when permitted, is postmarked or delivered to the Department on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For the purpose of this rule, a legal holiday means a holiday ~~that which~~ is observed by federal or state agencies as this term is defined in Chapter 683, F.S., and Section 7503, of the Internal Revenue Code of 1986, as amended. A "legal holiday" pursuant to Section 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

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

~~1. Any return for reporting the export is required to be submitted by electronic means; or~~

~~2. Any information report is required to be submitted by electronic means.~~

(4) through (6) No change.

Specific Authority 206.14(1), ~~206.485(1)~~, 206.59(1), 206.87(1)(e)2., 213.06(1), ~~213.755(8)~~ FS. Law Implemented 206.01(21), 206.02, 206.03, 206.04, 206.05, 206.051, 206.052, 206.41, 206.416, 206.43, 206.48, 206.485, 206.62, 206.87, 206.90, 206.91, 206.97, 206.9915, ~~213.755~~ FS. History—New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06, \_\_\_\_\_.

12B-5.090 Local Government Users.

(1) through (2) No change.

(3) RETURNS AND PAYMENTS.

(a) Returns. Local Government Users are required to file a Local Government User of Diesel Fuel Tax Return (Form DR-309634, incorporated by reference in Rule 12B-5.150, F.A.C.) with the Department on or before the 20th day of each

month following the month in which the use of fuel occurs. The return, when filed by hard copy, will be accepted as timely if postmarked or delivered to the Department on or before the 20th day of each month. An electronic return must be initiated and a confirmation from the Department must be received before 5:00 p.m., Eastern Time, on or before the 20th day of each month. If the 20th day of the month falls on a Saturday, Sunday, or legal holiday, ~~payments accompanied by~~ returns will be accepted as timely if a confirmation for an electronic return is received by the Department on or before 5:00 p.m., Eastern Time, or a hard-copy return is postmarked or delivered to the Department on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For the purpose of this rule, a legal holiday means a holiday that which is observed by federal or state agencies as this term is defined in Chapter 683, F.S., and Section 7503 of the Internal Revenue Code of 1986, as amended. A “legal holiday” pursuant to Section 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

(b) ~~Payments. Payments Electronic filing of payments, returns, and other information reports~~ must be submitted to the Department, as provided by Chapter 12-24, F.A.C., ~~when:~~

- ~~1. Payment of the tax is required to be made by electronic means;~~
  - ~~2. Any return for reporting tax is required to be submitted by electronic means;~~
  - ~~3. No tax is due with any return for reporting tax; or~~
  - ~~4. Any information report is required to be submitted by electronic means.~~
- (4) No change.

Specific Authority 206.14(1), 206.59(1), 206.87(1)(e)2., 213.06(1), 213.755(8) FS. Law Implemented 206.41(4), 206.86(11), 206.874(4), 213.755 FS. History—New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06, \_\_\_\_\_.

12B-5.100 Mass Transit Systems.

(1) through (2) No change.

(3) RETURNS AND PAYMENTS.

(a) Returns. Mass Transit Systems are required to file a Mass Transit System Provider Fuel Tax Return (Form DR-309633, incorporated by reference in Rule 12B-5.150, F.A.C.) and remit the tax due on or before the 20th day of the month following the month in which the use of fuel occurs. The return, when filed by hard copy, will be accepted as timely if postmarked or delivered to the Department on or before the 20th day of each month. An electronic return must be initiated and a confirmation from the Department must be received before 5:00 p.m., Eastern Time, on or before the 20th day of each month. If the 20th day of the month falls on a Saturday, Sunday, or legal holiday, ~~payments accompanied by~~ returns will be accepted as timely if a confirmation for an electronic

return is received by the Department on or before 5:00 p.m., Eastern Time, or a hard-copy return, is postmarked or delivered to the Department on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For the purpose of this rule, a legal holiday means a holiday that which is observed by federal or state agencies as this term is defined in Chapter 683, F.S., and Section 7503 of the Internal Revenue Code of 1986, as amended. A “legal holiday” pursuant to Section 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

(b) ~~Payments. Payments Electronic filing of payments, returns, and other information reports~~ must be submitted to the Department, as provided by Chapter 12-24, F.A.C., ~~when:~~

- ~~1. Payment of the tax is required to be made by electronic means;~~
  - ~~2. Any return for reporting tax is required to be submitted by electronic means;~~
  - ~~3. No tax is due with any return for reporting tax; or~~
  - ~~4. Any information report is required to be submitted by electronic means.~~
- (4) No change.

Specific Authority 206.14(1), 206.59(1), 206.87(1)(e)2., 213.06(1), 213.755(8) FS. Law Implemented 206.41(4), ~~206.41(4)~~, 206.86(12), 206.874(5)(a), 213.755 FS. History—New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06, \_\_\_\_\_.

12B-5.110 Blenders.

(1) GENERAL INFORMATION.

(a) through (b) No change.

(2) LICENSING.

~~(a)(e)1.~~ To obtain a license as blender, every person must file a Florida Fuel Tax Application (Form DR-156, incorporated by reference in Rule 12B-5.150, F.A.C.), with and the required attachments, with the Department, as provided in the application, and enroll in the Department’s e-Services Program.

2. To enroll in the e-Services Program to make payments and submit returns electronically to the Department, the blender must:

a. Complete enrollment on the Department’s Internet site at [myflorida.com/dor/e-services](http://myflorida.com/dor/e-services); or,

b. Complete Form DR-600, Enrollment and Authorization for e-Services Program (incorporated by reference in Rule 12-24.011, F.A.C.), as provided in Rule 12-24.004, F.A.C., and return it to the Department, if the blender is unable to use the Department’s Internet site to enroll.

3. Blenders who can establish that they are unable to comply with the electronic payment and electronic filing requirements must complete and submit Form DR-654, Request for Waiver From Electronic Filing (incorporated by



reference in Rule 12-24.011, F.A.C.), to establish in writing the basis for the requested waiver, as provided in Rule 12-24.010, F.A.C.

4. Forms DR-600 and DR-654 may be obtained from the Department by: 1) calling the Department at (800)352-3671, Monday through Friday, 8:00 a.m. to 7:00 p.m., Eastern Time; or, 2) visiting any local Department of Revenue Service Center. Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331 or (850)922-1115.

~~5.2~~ No change.

~~(b)(4)~~ A blender ~~is~~ may be a person who blends:

1. Diesel fuel with any other product to produce a product for use in a diesel engine;
2. Gasoline with alcohol to produce gasohol;
3. Kerosene with other product to produce a product suitable for use in a diesel or aircraft engine;
4. Motor, diesel, or aviation fuel with any other product to extend the volume of such fuels available for sale or use.

~~(3)(2)~~ RETURNS AND PAYMENTS.

(a) through (b) No change.

(c) Returns. Any person who is licensed as a blender is required to file a Blender/Wholesaler of Alternative Fuel Tax Return (Form DR-309635, incorporated by reference in Rule 12B-5.150, F.A.C.), electronically with the Department, as provided in Rule Chapter 12-24, F.A.C. The electronic return must be filed on or before the 20th day of the month following a month in which transactions occur. To be timely, the electronic return must be initiated and a confirmation from the Department must be received before 5:00 p.m., Eastern Time, on or before the 20th day of each month. For blenders who are authorized to submit Form DR-309635 by hard copy, the return will be accepted as timely if postmarked or delivered to the Department on or before the 20th day of each month. If the 20th day falls on a Saturday, Sunday, or legal holiday, payments accompanied by returns will be accepted as timely if a confirmation for an electronic return is received by the Department on or before 5:00 p.m., Eastern Time, or a hard-copy return, when permitted, is postmarked or delivered to the Department on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For the purpose of this rule, a legal holiday means a holiday that which is observed by federal or state agencies as this term is defined in Chapter 683, F.S., and Section 7503 of the Internal Revenue Code of 1986, as amended. A "legal holiday" pursuant to Section 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

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

1. ~~Payment of the tax is required to be made by electronic means;~~
2. ~~Any return for reporting taxes is required to be submitted by electronic means;~~
3. ~~No tax is due with a return for reporting tax; or~~
4. ~~Any information report is required to be submitted by electronic means.~~

Specific Authority 206.14(1), 206.485(1), 206.59(1), 206.87(1)(e)2., 213.06(1), 213.755(8) FS. Law Implemented 206.02(3), 206.48(1), 206.485, 206.86(7), 206.87(2)(e), 213.755 FS. History--New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06, \_\_\_\_\_.

12B-5.150 Public Use Forms.

(1)(a) The following public use forms and instructions are utilized by the Department and are hereby incorporated by reference in this rule.

(b) No change.

Form Number	Title	Effective Date
(2) through (19)	No change.	
(20) DR-309631	Terminal Supplier Fuel Tax Return (R. <u>01/09 01/08</u> )	___ <u>01/08</u>
(21) DR-309631N	Instructions for Filing Terminal Supplier Fuel Tax Return (R. <u>01/09 01/08</u> )	___ <u>01/08</u>
(22) DR-309632	Wholesaler/Importer Fuel Tax Return (R. <u>01/09 01/08</u> )	___ <u>01/08</u>
(23) DR-309632N	Instructions for Filing Wholesaler/Importer Fuel Tax Return (R. <u>01/09 01/08</u> )	___ <u>01/08</u>
(24) DR-309633	Mass Transit System Provider Fuel Tax Return (R. <u>01/09 01/08</u> )	___ <u>01/08</u>
(25) DR-309633N	Instructions for Filing Mass Transit System Provider Fuel Tax Return (R. <u>01/09 01/08</u> )	___ <u>01/08</u>
(26) DR-309634	Local Government User of Diesel Fuel Tax Return (R. <u>01/09 01/08</u> )	___ <u>01/08</u>
(27) DR-309634N	Instructions for Filing Local Government User of Diesel Fuel Tax Return (R. <u>01/09 01/08</u> )	___ <u>01/08</u>
(28) DR-309635	Blender/Retailer of Alternative Fuel Tax Return (R. <u>01/09 01/08</u> )	___ <u>01/08</u>
(29) DR-309635N	Instructions for Filing Blender/Retailer of Alternative Fuel Tax Return (R. <u>01/09 01/08</u> )	___ <u>01/08</u>

(30) DR-309636	Terminal Operator Information Return (R. <u>01/09 01/08</u> )	___ 01/08
(31) DR-309636N	Instructions for Filing Terminal Operator Information Return (R. <u>01/09 01/08</u> )	___ 01/08
(32) DR-309637	Petroleum Carrier Information Return (R. <u>01/09 01/08</u> )	___ 01/08
(33) DR-309637N	Instructions for Filing Petroleum Carrier Information Return (R. <u>01/09 01/08</u> )	___ 01/08
(34) DR-309638	Exporter Fuel Tax Return (R. <u>01/09</u> <u>01/08</u> )	___ 01/08
(35) DR-309638N	Instructions for Filing Exporter Fuel Tax Return (R. <u>01/09 01/08</u> )	___ 01/08
(36) through (39)	No change.	
(40)	<u>Motor Fuels EDI Technical Implementation Guide (ANSI ASC X12 V.4030)</u>	___

Specific Authority 206.14(1), 206.485(1), 206.59(1), 213.06(1), 213.755(8) FS. Law Implemented 206.02, 206.021, 206.022, 206.025, 206.026, 206.027, 206.028, 206.05, 206.055, 206.095, 206.404, 206.43, 206.485, 206.86, 206.877, 206.90, 206.91, 206.92, 206.9931, 206.9943, 213.755 FS. History—New 11-21-96, Amended 10-27-98, 5-1-06, 4-16-07, 1-1-08, 1-27-09,\_\_\_\_\_.

**PART IV TAX ON POLLUTANTS**

12B-5.400 Producers and Importers of Pollutants.

(1) through (5) No change.

(6) RETURNS.

(a) through (b) No change.

(c) Electronic ~~filing of payments, returns, and other information reports~~ must be submitted to the Department, as provided by Chapter 12-24, F.A.C., ~~when:~~

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

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

~~3. No tax is due with any return for reporting tax; or~~

~~4. Any information report is required to be submitted by electronic means.~~

(7) No change.

Specific Authority 206.14(1), 206.59(1), 213.06(1), 213.755(8) FS. Law Implemented 206.9915, 206.9925, 206.9931, 206.9935, 206.9941, 206.9942, 206.9943, 213.755 FS. History—New 11-21-96, Amended 10-27-98, 5-1-06,\_\_\_\_\_.

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

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor Charlie Crist and members of the Florida Cabinet, Attorney General Bill McCollum, Chief Financial Officer Alex Sink, and Agriculture Commissioner Charles H. Bronson, as agency head of the Department of Revenue

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 27, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development Workshop was published in the Florida Administrative Weekly on November 21, 2008 (Vol. 34, No. 47, p. 6078). A rule development workshop was conducted on December 9, 2008. No comments were received by the Department.

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

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**STATE BOARD OF ADMINISTRATION**

RULE NOS.:

19-8.010

19-8.012

19-8.013

19-8.029

19-8.030

RULE TITLES:

Reimbursement Contract

Procedures to Determine Ineligibility for Participation in the Florida Hurricane Catastrophe Fund and to Determine Exemption from Participation in the Florida Hurricane Catastrophe Fund

Revenue Bonds Issued Pursuant to Section 215.555(6), F.S.

Insurer Reporting Requirements

Insurer Responsibilities

PURPOSE AND EFFECT: The State Board of Administration, Florida Hurricane Catastrophe Fund, seeks to amend the rules listed above to implement Section 215.555, Florida Statutes, including the changes made to the law during 2008.

SUMMARY: Rule 19-8.010, F.A.C., Reimbursement Contract.: The proposed amendments to 19-8.010, F.A.C., adopt the Reimbursement Contract for the Contract Year 2009-2010, including the three addenda. Addendum No. 1: This addendum incorporates the Temporary Emergency Options for Additional Coverage "TEACO" program. This program allows insurers to purchase its FHCF premium share of a \$1 billion, \$2 billion, or a \$3 billion layer of coverage below the mandatory FHCF layer of coverage.

Addendum No. 2: This addendum incorporates the Temporary Increase in Coverage Limit Options "TICL" program. This program allows insurers to choose from one of twelve options for increasing their level of FHCF coverage above and beyond the mandatory FHCF coverage.

Addendum No. 3: This addendum gives effect to the extension of FHCF coverage to policies of liquidated insurers taken over by Citizens Property Insurance Corporation.

Rule 19-8.012, F.A.C., Procedures to Determine Ineligibility for Participation in the Florida Hurricane Catastrophe Fund and to Determine Exemption from Participation in the Florida Hurricane Catastrophe Fund due to Limited Exposure.: The proposed amendments to Rule 19-8.012, F.A.C., update and adopt forms for ineligibility and exemption from the FHCF and also provide an insurer seeking the exemption for limited exposure with additional time in which to petition for such exemption and provide an explanation of covered policy exposure.

Rule 19-8.013, F.A.C., Revenue Bonds Issued Pursuant to Section 215.555(6), F.S.: The proposed amendments to this rule reflect changes in the Exhibit of Premiums and Losses in the property and casualty annual statement of the National Association of Insurance Commissioners required to be filed by authorized insurers pursuant to Section 624.424, F.S.

Rule 19-8.029, F.A.C., Insurer Reporting Requirements: The proposed amendments to Rule 19-8.029, F.A.C., update and adopt the forms for insurer exposure and loss reporting to the Florida Hurricane Catastrophe Fund for the 2009-2010 Contract Year and adds a requirement that insurers with covered losses below their retention must file an annual proof of loss report. Also, Year Built, Florida Building Code Indicator, Structure Opening Protection, Roof Shape and Roof-Deck Attachment, all previously existing fields for reporting, will, beginning with the 2009 Data Call, be rating factors.

Rule 19-8.030, F.A.C., Insurer Responsibilities: The proposed amendments to Rule 19-8.030, F.A.C., remove all references to the Section 215.555(4)(b)4, F.S., \$10 million optional coverage as this coverage will expire on May 31, 2009. The incorporated forms have also been updated to reflect this change.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Board has prepared a statement and found the cost of the proposed amendments to be minimal. Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 215.555(3) FS.

LAW IMPLEMENTED: 215.555(2), (3), (4), (5), (6), (7), (10), (16), (17) FS.

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

DATE AND TIME: March 18, 2009, 9:00 a.m. – 12:00 Noon (ET)

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

Persons who wish to participate by telephone may call 1(888)808-6959 and use conference code 4765251363 on the date and at the time indicated for the hearing.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Tracy Allen by telephone at (850)413-1341 or by mail at P. O. Box 13300, Tallahassee, FL 32317-3300. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Tracy Allen, Senior Attorney, Florida Hurricane Catastrophe Fund, State Board of Administration, P. O. Box 13300, Tallahassee, FL 32317-3300; telephone (850)413-1341

THE FULL TEXT OF THE PROPOSED RULES IS:

19-8.010 Reimbursement Contract.

(1) through (14) No change.

(15) The reimbursement contract for the 2009-2010 contract year, including all Addenda, required by Section 215.555(4), F.S., which is called Form FHCF-2009K-"Reimbursement Contract" or "Contract" between (name of insurer) (the "Company")/NAIC # ( ) and The State Board of Administration of the State of Florida ("SBA") which administers the Florida Hurricane Catastrophe Fund ("FHCF"), rev. 05/09, is hereby adopted and incorporated by reference into this rule. This contract is effective from June 1, 2009 through May 31, 2010.

~~(16)~~(15) Copies of the reimbursement contract may be obtained from the FHCF website, www.sbafla.com/fhcf or by contacting the State Board of Administration. The mailing address is P. O. Box 13300, Tallahassee, Florida 32317-3300. The street address is 1801 Hermitage Blvd., Tallahassee, Florida 32308 and the telephone number is (850)413-1341.

Specific Authority 215.555(3) FS. Law Implemented 215.555 FS. History—New 5-31-94, Amended 8-29-95, 5-19-96, 6-19-97, 5-28-98, 5-17-99, 9-13-99, 6-19-00, 6-3-01, 6-2-02, 11-12-02, 5-13-03, 5-19-04, 8-29-04, 5-29-05, 11-13-05, 5-10-06, 9-5-06, 5-8-07,8-13-07, 6-8-08, 9-2-08,\_\_\_\_\_.

19-8.012 Procedures to Determine Ineligibility for Participation in the Florida Hurricane Catastrophe Fund and to Determine Exemption from Participation in the Florida Hurricane Catastrophe Fund due to Limited Exposure.

(1) No change.

(2) Procedures to Determine Ineligibility for Participation in the Fund.

(a) An insurer must apply for ineligibility from participation in the Fund if it has surrendered its certificate of authority to write insurance in Florida. To apply, the insurer shall submit a written request for ineligibility stating that it will have no covered policies, as that term is defined in Section 215.555(2)(c), F.S., after May 31 of the year for which the ineligibility is sought and provide a copy of the Office of Insurance Regulation Order, if any, revoking the insurer's authority to write insurance in Florida. The request shall be sent to the Fund's Administrator, Paragon Strategic Solutions Inc., at 8200 Norman Center Drive, Bloomington, Minnesota 55437 ~~3600 American Boulevard West, Suite 700, Minneapolis, Minnesota 55431~~.

(b) An insurer which is not surrendering its certificate to write insurance in Florida must apply for ineligibility from participation in the Fund if it no longer has any covered policies in force, as that term is defined in Section 215.555(2)(c), F.S. To apply, the insurer shall submit a written request for a determination regarding its ineligibility for participation. The request shall be sent, no later than September 1 of the current contract year, to the Fund's Administrator, Paragon Strategic Solutions Inc., at 8200 Norman Center Drive, Bloomington, Minnesota 55437 ~~3600 American Boulevard, Suite 700, Minneapolis, Minnesota 55431~~, and shall contain the following information:

1. through 2. No change.

3. Form FHCF-E1, "Statement related to Covered Policies as defined in Section 215.555(2)(c), F.S.," rev. 05/0806, signed by two executive officers attesting to the fact that the insurer writes no covered policies. Form FHCF-E1 is hereby adopted and incorporated by reference. The form may be obtained from the Fund's Administrator at the address stated in this paragraph.

(c) ~~Upon receipt of the information required by paragraph (a) or (b), above, the Fund's Administrator will forward copies to~~ The State Board of Administration of Florida ("Board") ~~shall for~~ review the information received pursuant to paragraph (a) or (b) above.

~~1. If the Board determines that additional information is needed before a decision can be made, the Fund's Administrator will obtain the information and forward it to the Board.~~

~~1.2.~~ If the Board determines that the insurer writes covered policies, as defined in Section 215.555(2)(c), F.S., and in Article V of the reimbursement contract, as adopted and incorporated by reference in Rule 19-8.010, F.A.C., and must

therefore participate in the Fund as required by Section 215.555(4)(a), F.S., the Board will notify the insurer that its request has been denied. All insurers determined to be participants in the Fund will be required to enter into a reimbursement contract with the Board and will be subject to all premium payments and interest thereon, as well as fees for inadequate exposure data.

~~2.3.~~ If the Board determines that the insurer does not write covered policies, as defined in Section 215.555(2)(c), F.S., and in Article V of the reimbursement contract, as adopted and incorporated by reference in Rule 19-8.010, F.A.C., the Board will notify the insurer that its request has been approved. This ineligibility continues until the insurer once again begins writing covered policies. The insurer must immediately notify the Board if it begins writing covered policies. ~~The Board will provide the Fund's Administrator with a copy of any approval letter so that the Fund's Administrator can update its information and can refund any overpayment of reimbursement premium.~~

(d) Any Company granted ineligibility status which fails to execute and return the reimbursement contract to the Fund within thirty days of writing its first covered policy following the grant of ineligibility status shall not be eligible for reimbursement for any covered losses from a covered event occurring prior to the receipt by the Fund of the executed reimbursement contract.

(3) Procedures to Determine Exemption from the Fund Due to Limited Exposure.

(a) A current participant ~~An insurer~~ requesting exemption from participation in the Fund because its exposure for covered policies, as defined in Section 215.555(2)(c), F.S., and in Article V of the reimbursement contract, as adopted and incorporated by reference in Rule 19-8.010, F.A.C., is less than \$10 million in the aggregate shall submit a written request for a determination regarding such an exemption no later than September 1 ~~June 1~~ of the current upcoming contract year.

(b) If requested within thirty days of writing its first covered policy, a new participant, as defined in Article V of the reimbursement contract, may request exemption if its exposure is less than \$10 million in the aggregate and is expected to remain less than \$10 million in the aggregate for the remainder of the contract year.

(c) The request shall be sent to the Fund's Administrator, Paragon Strategic Solutions Inc., at 8200 Norman Center Drive, Bloomington, Minnesota 55437 ~~3600 American Boulevard West, Suite 700, Minneapolis, Minnesota 55431~~. The insurer shall submit the following information no later than September 1 ~~June 30~~ of the current upcoming contract year.

1. through 2. No change.

3. Form FHCF-E2, "Information regarding De Minimis FHCF Covered Policies In-force at ~~June 30~~ May 31, \_\_\_\_," rev. 05/0906. Form FHCF-E2 is hereby adopted and incorporated by reference. The form may be obtained from the Fund's Administrator at the address stated in this paragraph.

4. Form FHCF-E3, "Statement related to De Minimis Aggregate Exposure for Covered Policies as defined in Section 215.555(2)(c), F.S., on behalf of \_\_\_\_\_," rev. 05/0806, signed by two executive officers attesting to the fact that the insurer writes no covered policies with an aggregate exposure of \$10 million or more. Form FHCF-E3 rev. 05/0806, is hereby adopted and incorporated by reference. The form may be obtained from the Fund's Administrator at the address stated in this paragraph.

~~(d)(b) The Board shall review the information received pursuant to paragraph (c) above. Upon receipt of the information required by paragraph (3)(a), above, the Fund's Administrator will forward copies to the Board for review. 1. If the Board determines that additional information is needed before a decision can be made, the Fund's Administrator will obtain the information and forward it to the Board.~~

~~1.2.~~ If the Board determines that the insurer has an aggregate exposure of \$10 million or more for covered policies, as defined in Section 215.555(2)(c), F.S., and in Article V of the reimbursement contract, as adopted and incorporated by reference in Rule 19-8.010, F.A.C., and must therefore participate in the Fund as required by Section 215.555(4)(a), F.S., because it does not qualify for the exemption permitted by Section 215.555(3), F.S., the Board will notify the insurer that its request has been denied. All insurers determined to be participants in the Fund will be required to enter into a reimbursement contract with the Board and will be subject to all premium payments and interest thereon, as well as fees for inadequate exposure data.

~~2.3.~~ If the Board determines that the insurer has an aggregate exposure of less than \$10 million for covered policies, as defined in Section 215.555(2)(c), F.S., and in Article V of the reimbursement contract, as adopted and incorporated by reference in Rule 19-8.010, F.A.C., and that granting the exemption will not adversely affect the actuarial soundness of the Fund, the Board will notify the insurer that its request has been approved and note that the insurer must immediately notify the Board if its exposure becomes \$10 million or more in the aggregate. If this occurs, the insurer will be treated as a "new participant" and will be subject to the provisions of subparagraph 19-8.028(4)(c)3., F.A.C., if its exposure becomes \$10 million or more during the period from June 1 through November 30 or will be subject to the provisions of subparagraph 19-8.028(4)(c)4., F.A.C., if its exposure becomes \$10 million or more during the period from December 1 through May 31. ~~The Board will provide the~~

~~Fund's Administrator with a copy of any approval letter so that the Fund's Administrator can update its information and can refund any overpayment of reimbursement premium.~~

~~(e)4.~~ The exemption for minimal exposure permitted by Section 215.555(3), F.S., is optional for the insurer but, once the exemption is requested, cannot be withdrawn by the insurer. An insurer with less than \$10 million in aggregate exposure for covered policies is not required to ask for an exemption from the Fund. Such an insurer may continue to participate in the Fund if it so desires. An insurer which has been granted an exemption from the Fund may request to be reinstated in the Fund as a participating member. However, such a request must be made prior to no later than June 1 of ~~a~~ each contract year. No insurer which has been granted an exemption under this subsection shall be reinstated during the Atlantic Hurricane Season, which begins June 1 and ends November 30 of each year, so long as its aggregate exposure remains below \$10 million.

~~(f)5.~~ The exemptions for minimal exposure permitted by Section 215.555(3), F.S., shall not be granted by the Board if the aggregate number of anticipated exemptions adversely affects the actuarial soundness of the Fund. ~~A decision as to adverse actuarial effect will be made by the Board annually in consultation with the Board's actuarial consultant. To determine whether an exemption adversely affects the actuarial soundness of the Fund, the Board shall take into consideration the following factors: the number of insurers participating in the Fund; the number of insurers which have requested or are requesting exemption from the Fund on the basis of limited exposure; whether the impact of excluding insurers with less than \$10 million in exposure will significantly affect premium revenue; the currently available liquid assets of the Fund; the amount and maturity of any outstanding debt; the history of payment of reimbursement premium to the Fund; the history of payment of reimbursable losses by the Fund; the history of payment of assessments under Section 215.555(6), F.S.; the meteorological and actuarial likelihood that the Fund will have to pay loss reimbursements during the current contract year; and the current market condition of the property insurance industry in Florida.~~

~~(e)(g)~~ Any Company granted de minimis exempt status which fails to execute and return the reimbursement contract to the Fund within thirty days of writing a covered policy that results in the insurers aggregate covered exposure exceeding \$10 million dollars shall not be eligible for reimbursement for any covered losses occurring from a covered event prior to the receipt by the Fund of the executed reimbursement contract.

Specific Authority 215.555(3) FS. Law Implemented 215.555(2)(c), (3), (4), (5) FS. History—New 2-17-97, Amended 6-2-02, 5-13-03, 5-19-04, 5-29-05, 5-10-06, 6-8-08,\_\_\_\_\_.

19-8.013 Revenue Bonds Issued Pursuant to Section 215.555(6), F.S.

(1) through (5)(d)1. No change.

2. Assessable Lines. Note that the numbers below preceding the names of the lines of business do not correspond to the line numbers of the property and casualty annual statement referenced in subparagraph 1., immediately above.

- a. Fire.
- b. Allied Lines.
- c. Multiple Peril Crop.
- d. Farmowners Multiple Peril.
- e. Homeowners Multiple Peril.
- f. Commercial Multiple Peril (non-liability).
- g. Commercial Multiple Peril (liability).
- h. Mortgage Guaranty.
- i. Ocean Marine.
- j. Inland Marine.
- k. Financial Guaranty.

l. Medical Malpractice (Medical Malpractice insurance premiums are not subject to Emergency Assessments attributable to covered events occurring prior to the Contract Year that begins on June 1, 2010).

- m. Earthquake.
- n. Other Liability.
- o. Products Liability.
- p. Private Passenger Auto No-Fault.
- q. Other Private Passenger Auto Liability.
- r. Commercial Auto No-Fault.
- s. Other Commercial Auto Liability.
- t. Private Passenger Auto Physical Damage.
- u. Commercial Auto Physical Damage.
- v. Aircraft (all perils).
- w. Fidelity.
- x. Surety.
- y. Burglary and Theft.
- z. Boiler and Machinery.
- aa. Credit.

**bb. Warranty.**

**cc. Aggregate Write Ins for Other Lines of Business.**

Specific Authority 215.555(3) FS. Law Implemented 215.555(2), (3), (4), (5), (6), (7) FS. History—New 9-18-97, Amended 12-3-98, 9-12-00, 6-1-03, 5-19-04, 5-29-05, 5-10-06, 9-5-06, 6-8-08, \_\_\_\_\_.

19-8.029 Insurer Reporting Requirements.

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

(k) For the 2009/2010 Contract Year, the reporting shall be in accordance with Form FHCF-D1A, "Florida Hurricane Catastrophe Fund 2009 Data Call," rev. 05/09, hereby adopted and incorporated by reference. The form may be obtained from the Fund's Administrator at the address stated in subsection (6) below. A new participant writing covered policies on or after

June 1 but prior to December 1, shall report its actual exposure as of December 31 of the Contract Year on or before March 1 of the Contract Year, to the Administrator.

(5) Loss Reimbursement Reporting Requirements.

(a) No change.

(b) Insurers shall report their ultimate net losses (as defined in the Reimbursement Contract, adopted and incorporated into Rule 19-8.010, F.A.C.) for each loss occurrence on the Form FHCF-L1B, "Florida Hurricane Catastrophe Fund Proof of Loss Report," for the applicable Contract Year, as specified in subsection (7) herein. To obtain copies of this form, see subsection (6), below. To qualify for reimbursement, the Proof of Loss Report must have the original signatures of two executive officers authorized by the Company to sign the report. Proof of Loss Reports may be faxed only if the Company does not qualify for a reimbursement. While a Company may submit a Proof of Loss Report requesting reimbursement at any time following a loss occurrence, all Companies shall submit a mandatory Proof of Loss Report for each loss occurrence no earlier than December 1 and no later than December 31 of the Contract Year during which the Covered Event(s) occurs using the most current data available, regardless of the amount of Ultimate Net Loss or the amount of loss reimbursements or advances already received. After the mandatory December Proof of Loss Report, quarterly Proof of Loss Reports are required. For purposes of this rule, quarterly Proof of Loss Reports shall be those reports submitted at each quarter end date after December 31 of the Contract Year in which the loss occurrence occurs and continuing until all claims and losses resulting from loss occurrences commencing during the Contract Year are fully discharged, including any adjustments to such losses due to salvage or other recoveries, in accordance with the reporting requirements in this paragraph. "Fully Discharged" means the earlier of the date on which the insurer has paid its policyholders in full or the commutation clause, in Article X of the Reimbursement Contract, adopted in Rule 19-8.010, F.A.C., takes effect. For the quarterly report due on March 31, any insurer whose losses exceed 50% of its FHCF retention for a specific loss occurrence shall submit a Proof of Loss Report for that loss occurrence. For the quarterly report due on June 30, any insurer whose losses exceed 75% of its FHCF retention for a specific loss occurrence shall submit a Proof of Loss Report for that loss occurrence. For the quarterly reports due on September 30 and thereafter, any insurer which anticipates that its losses will exceed its FHCF retention for a specific loss occurrence shall submit quarterly Proof of Loss Reports until all its losses are paid to its policyholders and the insurer has received reimbursement from the Fund. Annually, all Companies ~~which experienced losses for a specific loss occurrence, but are not required to report quarterly loss reports for that loss occurrence because they received their full coverage under the Contract Year in which the loss~~

~~occurrence(s) occurred,~~ shall submit a mandatory year-end Proof of Loss Report for each loss occurrence, using the most current data available ~~unless the Company has no losses.~~ This Proof of Loss Report shall be filed no earlier than December 1 and no later than December 31 of each year and shall continue until the earlier of the expiration of the commutation period or until all claims and losses resulting from the loss occurrence are fully discharged including any adjustments to such losses due to salvage or other recoveries.

(c) No change.

(6) All the forms adopted and incorporated by reference in this rule may be obtained from: Administrator, Florida Hurricane Catastrophe Fund, Paragon Strategic Solutions Inc., 8200 Norman Center Drive, Bloomington, Minnesota 55437 ~~3600 American Boulevard West, Suite 700, Minneapolis, Minnesota 55431.~~

(7)(a) through (7)(d) No change.

(e) For the 2009/2010 Contract Year, the applicable Interim Loss Report is the "Contract Year 2009 Interim Loss Report, Florida Hurricane Catastrophe Fund (FHCF), FHCF-L1A, rev. 05/09, which is hereby adopted and incorporated by reference. The applicable Proof of Loss Report is the "Contract Year 2009 Proof of Loss Report, Florida Hurricane Catastrophe Fund (FHCF), FHCF-L1B, rev. 05/09, which is hereby adopted and incorporated by reference. The forms may be obtained from the Fund's Administrator at the address stated in subsection (6) above.

(8) No change.

Specific Authority 215.555(3) FS. Law Implemented 215.555(2), (3), (4), (5), (6), (7), (15) FS. History—New 5-17-99, Amended 6-19-00, 6-3-01, 6-2-02, 11-12-02, 5-13-03, 5-19-04, 8-29-04, 5-29-05, 5-10-06, 5-8-07, 6-8-08,\_\_\_\_\_.

19-8.030 Insurer Responsibilities.

(1) through (7) No change.

(8) Loss Reporting. Participating Insurers are required to file the following two types of loss reports at the times prescribed in Rule 19-8.029, F.A.C. Form FHCF-L1A, "Florida Hurricane Catastrophe Fund Interim Loss Report," for the applicable Contract Year and Form FHCF-L1B, "Florida Hurricane Catastrophe Fund Proof of Loss Report," for the applicable Contract Year. For the Contract Year 2006-2007, the applicable "Florida Hurricane Catastrophe Fund Interim Loss Report," is the FHCF-L1A rev. 05/06 and the applicable "Florida Hurricane Catastrophe Fund Proof of Loss Report," is the FHCF-L1B rev. 05/06. For the Contract Year 2007-2008, the applicable "Florida Hurricane Catastrophe Fund Interim Loss Report," is the FHCF-L1A rev. 05/07 and the applicable "Florida Hurricane Catastrophe Fund Proof of Loss Report," is the FHCF-L1B rev. 05/07. For the Contract Year 2008-2009, the applicable "Florida Hurricane Catastrophe Fund Interim Loss Report," is the FHCF-L1A rev. 05/08 and the applicable "Florida Hurricane Catastrophe Fund Proof of Loss Report," is

the FHCF-L1B rev. 05/08. These forms are hereby adopted and incorporated by reference into this rule. These forms may be obtained from the Fund's Administrator, Paragon Strategic Solutions Inc., 8200 Norman Center Drive, Bloomington, Minnesota 55437 ~~3600 American Boulevard West, Suite 700, Minneapolis, Minnesota 55431.~~ Companies must submit a detailed claims listing (in a delimited ASCII format) to support the losses reported in the FHCF-L1B, Proof of Loss Report, at the same time it submits its first Proof of Loss Report for a specific Covered Event that qualifies the company for reimbursement under that Covered Event, and should be prepared to supply a detailed claims listing for any subsequent Proof of Loss Report upon request. Refer to Form FHCF-LAP1 for the required file layout. The Proof of Loss Report and the detailed claims listing are required to be sent to the FHCF Administrator, Paragon Strategic Solutions Inc., at the address listed above, ~~3600 American Boulevard West, Minneapolis, MN 55431.~~ If your company submits its Proof of Loss Reports electronically through the FHCF's Online Claims System at www.sbafla.com/fhcf, the detailed claims listing may be attached to the Company's submission.

(9) No change.

(a) Resubmissions of Data: A \$1,000 resubmission fee (for resubmissions that are not the result of an examination exam by the SBA) will be invoiced by the FHCF for each submission. If a resubmission is necessary as a result of an examination report issued by the SBA, the resubmission fee will be \$2,000. If a company's examination-required resubmission is inadequate and the SBA requires an additional resubmission(s), the resubmission fee for each subsequent resubmission shall be \$2,000.

(b) through (10) No change.

(11) Optional Coverage Programs: Except as provided in this subsection, this rule applies to ~~the Additional Coverage option created in Section 215.555(4)(b)4., F.S. ("subparagraph (4)(b)4. Additional Coverage Option")~~, the Temporary Emergency Additional Coverage Option ("TEACO") created in Section 215.555(16), F.S., and the Temporary Increase in Coverage Limit option created in Section 215.555(17), F.S. ("TICL").

~~(a) The definition of Premium in paragraph (3)(m), above, does not apply to the subparagraph (4)(b)4. Additional Coverage Option. With respect to this Option, the word "Premium" when used in this rule shall refer to the amount payable under Section 215.555(4)(b)4., F.S., for this optional coverage.~~

(a)(b) The definition of Premium in paragraph (3)(m), above, does not apply to TEACO. With respect to this Option, the word "Premium" when used in this rule shall refer to the amount payable under Section 215.555(16)(f), F.S., for this optional coverage.

(12) Company Contact Information: Companies must submit Form FHCF-C1, Company Contact Information, by June 1 of each Contract Year to the FHCF Administrator, Paragon Strategic Solutions Inc., 8200 Norman Center Drive, Bloomington, Minnesota 55437. This form must be updated by the Company as the information provided thereon changes. The FHCF shall have the right to rely upon the information provided by the Company to the FHCF on this form until receipt by the FHCF of a new properly completed and notarized FHCF C-1 from the Company.

Specific Authority 215.555(3) FS. Law Implemented 215.555 FS. History—New 5-13-03, Amended 5-19-04, 5-29-05, 5-10-06, 5-8-07, 8-13-07, 6-8-08,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULES: Jack E. Nicholson, FHCF Chief Operating Officer, State Board of Administration

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

DATE PROPOSED RULES WERE APPROVED BY AGENCY HEAD: January 27, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 19, 2008, Vol. 34, No. 51

**STATE BOARD OF ADMINISTRATION**

**Florida Prepaid Postsecondary Education Expense Board**

RULE NO.: 19B-4.001  
 RULE TITLE: Application

PURPOSE AND EFFECT: To update the Florida Prepaid College Plan and Florida College Investment Plan New Account Application Form and the Florida Prepaid College Plan Master Covenant.

SUMMARY: This rule is amended to reflect the updated form for the Florida Prepaid College Plan and Florida College Investment Plan New Account Application Form and the updated form for the Florida Prepaid College Plan Master Covenant.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

SPECIFIC AUTHORITY: 1009.971(1), (4), (6) FS.

LAW IMPLEMENTED: 1009.98 FS.

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

DATE AND TIME: March 2, 2009, 2:00 p.m.

PLACE: Suite 210, Hermitage Building, 1801 Hermitage Boulevard, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Thomas J. Wallace, Executive Director, 1801 Hermitage Boulevard, Suite 210, Tallahassee, Florida, 32308, telephone (850)488-8514

THE FULL TEXT OF THE PROPOSED RULE IS:

19B-4.001 Application.

(1) No change.

(2) The Florida Prepaid College Plan and Florida College Investment Plan New Account Application, Form No. FPCB 2009-10 ~~2008-10~~, is hereby incorporated by reference and may be obtained from the Board by calling (800)552-GRAD (4723) (prompt 1). The Florida Prepaid College Plan Program Master Covenant, Form No. FPCB 2009-02 ~~2008-02~~, is hereby incorporated by reference and may be obtained from the Board by calling (800)552-GRAD (4723) (prompt 1).

Specific Authority 1009.971(1), (4), (6) FS. Law Implemented 1009.98, FS. History—New 3-29-89, Amended 2-6-90, 3-19-92, Formerly 4G-4.001, Amended 12-5-93, 5-31-95, 6-20-96, 10-20-96, 12-16-97, 2-18-99, 6-6-99, 2-8-00, 5-21-00, 1-3-01, 10-9-01, 11-27-02, 10-1-03, 1-29-04, 12-28-04, 6-2-05, 12-20-05, 1-1-07, 11-27-07, 12-17-07, 11-18-08, 1-28-09,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Florida Prepaid College Board

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Prepaid College Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 17, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 23, 2009

**STATE BOARD OF ADMINISTRATION**

**Florida Prepaid Postsecondary Education Expense Board**

RULE NO.: 19B-16.002  
 RULE TITLE: Application for Participation in the Program

PURPOSE AND EFFECT: To update the Florida College Investment Plan application for participation.

SUMMARY: This rule is amended to reflect the updated form for the Florida Prepaid College Plan and Florida College Investment Plan New Account Application.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

SPECIFIC AUTHORITY: 1009.971(1), (4), (6) FS.

LAW IMPLEMENTED: 1009.981 FS.



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

DATE AND TIME: March 2, 2009, 2:00 p.m.

PLACE: Suite 210, Hermitage Building, 1801 Hermitage Boulevard, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Thomas J. Wallace, Executive Director, 1801 Hermitage Boulevard, Suite 210, Tallahassee, Florida 32308, telephone (850)488-8514

THE FULL TEXT OF THE PROPOSED RULE IS:

19B-16.002 Application for Participation in the Program.

(1) No change.

(2) The Florida Prepaid College Plan and Florida College Investment Plan New Account Application, Form No. FPCB 2009-10 2008-10, is hereby incorporated by reference. The form may be obtained from the Board by calling (800)552-GRAD (4723) (prompt 1).

(3) No change.

Specific Authority 1009.971(1), (4), (6) FS. Law Implemented 1009.981 FS. History--New 11-27-02, Amended 1-29-04, 12-28-04, 6-2-05, 12-20-05, 1-1-07, 11-27-07, 11-18-08, 1-28-09,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Florida Prepaid College Board

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Prepaid College Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 17, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 23, 2009

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-204.005 RULE TITLE: Cash Meals and Special Group Meals

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to amend Rule 33-204.005, F.A.C., to reflect the Department's switch from a private food service contractor to self-operation.

SUMMARY: The proposed rule eliminates language in Rule 33-204.005, F.A.C., referencing a private food service contract, as the Department is switching from a private food service contractor to self-operation.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 110.502, 110.504, 944.09 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kendra Lee Jowers, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-204.005 Cash Meals and Special Group Meals.

(1) The cost of meals for employees or volunteers shall be borne by the individual being provided with the meal, except as provided in subsection (2) of this section. Employees or volunteers served meals shall be charged ~~at the~~ as determined by the Secretary designated in the current food services contract.

(2) No change.

Specific Authority 944.09 FS. Law Implemented 110.502, 110.504, 944.09 FS. History--New 1-18-89, Formerly 33-30.005, Amended 5-21-00, 6-26-03, 10-24-04,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: George Sapp, Assistant Secretary of Institutions

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Walter A. McNeil, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 1, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 12, 2008

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE NO.: 40D-4.091 RULE TITLE: Publications and Agreements Incorporated by Reference

PURPOSE AND EFFECT: The purpose of this rulemaking is to incorporate by reference a revised Environmental Resource Permit Information Manual, Part B, Basis of Review (BOR). The effect of this rule is to amend Section 2.0 of the BOR to clarify that entities with the power of eminent domain can demonstrate ownership and control sufficient to undertake the permitted activities.

SUMMARY: This rule amendment is proposed to incorporate by reference a revision to Section 2.0 of the BOR. Paragraph 40D-4.301(1)(j), F.A.C., requires that an applicant for an Environmental Resource Permit provide reasonable assurance that the permitted activities will be conducted by an entity with the financial, legal and administrative capability of ensuring that the activities will be undertaken in accordance with the terms and conditions of the permit. Section 2.0 of the BOR

establishes how an applicant may demonstrate compliance with this requirement. Section 2.0 of the BOR does not currently include the power of eminent domain in the discrete list of methods of demonstrating ownership and control sufficient to undertake the permitted activities. In order to clarify this oversight, the District proposes to amend Section 2.0 of the BOR to provide that compliance with this requirement may be demonstrated by an entity with the power of eminent domain. An additional revision to Section 2.0 of the BOR is proposed by the District to require, in those instances where control is demonstrated by an entity with the power of eminent domain, a permit condition prohibiting construction until ownership or legal control is transferred to the permittee. The proposed revision to Section 2.0 of the BOR necessitates the amendment to Rule 40D-4.091, F.A.C., to incorporate by reference the revised BOR.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** No Statement of Estimated Regulatory Cost was prepared.

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

**SPECIFIC AUTHORITY:** 373.044, 373.046, 373.113, 373.171, 373.414 FS.

**LAW IMPLEMENTED:** 373.0361, 373.114, 373.171, 373.403, 373.413, 373.4135, 373.4136, 373.414, 373.4144, 373.416, 373.429, 373.441 FS.

**IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.**

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:** Adrienne E. Vining, Staff Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4660

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

40D-4.091 Publications and Agreements Incorporated by Reference.

The following documents are hereby incorporated into this chapter and Chapters 40D-40 and 40D-400, F.A.C.:

(1) Environmental Resource Permitting Information Manual Part B, Basis of Review, Environmental Resource Permit Applications within the Southwest Florida Water Management District, \_\_\_\_\_, 2009 ~~June 22, 2008~~. This document is available from the District upon request.

(2) through (5) No change.

Specific Authority 373.044, 373.046, 373.113, 373.171, 373.414 FS. Law Implemented 373.0361, 373.114, 373.171, 373.403, 373.413, 373.4135, 373.4136, 373.414, 373.4144, 373.416, 373.429, 373.441 FS. History—New 4-2-87, Amended 3-1-88, 9-11-88, 10-1-88, 4-1-91, 11-16-92, 1-30-94, 10-3-95, 12-26-95, 5-26-96, 7-23-96, 4-17-97,

4-12-98, 7-2-98, 12-3-98, 7-28-99, 8-3-00, 9-20-00, 6-12-01, 10-11-01, 2-27-02, 7-29-02, 3-26-03, 7-23-03, 8-3-03, 3-11-04, 6-7-04, 2-1-05, 6-30-05, 10-19-05, 2-8-06, 5-2-06, 7-1-07, 9-25-07(1), 9-25-07(4), 11-26-07, 5-12-08, 5-20-08, 6-22-08,

**ENVIRONMENTAL RESOURCE PERMIT INFORMATION  
MANUAL PART B  
BASIS OF REVIEW**

**CHAPTER 2 – ADMINISTRATIVE CRITERIA**

**2.0 Ownership and Control** – In accordance with the requirement of paragraph 40D-4.301(1)(j), F.A.C., an applicant must demonstrate reasonable assurance that permitted activities will be conducted by an entity with financial, legal and administrative capability of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit, if issued. Compliance with this requirement may be demonstrated through a deed, a long-term lease demonstrating control of the project area adequate to comply with all permit conditions, a purchase and sale agreement, or similar document. Compliance with this requirement may also be demonstrated by an entity with the power of eminent domain. Where control is demonstrated by a long-term lease, the permit will be conditioned to address transfer of control or proper abandonment of the permitted system at the end of the lease. Where control is demonstrated by a purchase and sale agreement, the permit will be conditioned to terminate if the transfer of ownership does not occur, and to prohibit construction until ownership is transferred to the permittee. Where control is demonstrated by an entity with the power of eminent domain, the permit will be conditioned to prohibit construction until ownership or legal control is transferred to the permittee.

**NAME OF PERSON ORIGINATING PROPOSED RULE:** Adrienne E. Vining, Staff Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4660

**NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE:** Southwest Florida Water Management District Governing Board

**DATE PROPOSED RULE APPROVED BY AGENCY HEAD:** January 26, 2009

**DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:** September 19, 2008

**WATER MANAGEMENT DISTRICTS**

**Southwest Florida Water Management District**

**RULE NO.:** 40D-8.041 **RULE TITLE:** Minimum Flows

**PURPOSE AND EFFECT:** To amend Rule 40D-8.041, F.A.C. to establish a minimum flow for the Weeki Wachee River System pursuant to Section 373.042, Florida Statutes. For purposes of this rule, the Weeki Wachee System includes the watercourse from the Weeki Wachee Spring to the Gulf of

Mexico including Twin Dees Spring, Mud River (including Salt Spring) from Mud Spring to the confluence with the Weeki Wachee River and Jenkins Springs and associated spring run.

SUMMARY: Establishment of a minimum flow for the Weeki Wachee River System and identification of five and ten year mean and median annual averages for use in periodic evaluation of maintenance of the minimum flow.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

SPECIFIC AUTHORITY: 373.044, 373.113, 373.171 FS.

LAW IMPLEMENTED: 373.036, 373.0361, 373.042, 373.0421 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Charlotte Edwards, Sr. Administrative Assistant, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4651

THE FULL TEXT OF THE PROPOSED RULE IS:

40D-8.041 Minimum Flows.

(1) through (10) No change.

(11) Minimum Flows for Weeki Wachee River System located within Hernando County, Florida.

(a) The Minimum Flows are to ensure that the minimum hydrologic requirements of the water resources or ecology of the natural systems associated with the Weeki Wachee River System are met. The Minimum Flow for the Weeki Wachee River System is intended to maintain 90% of the natural flow of the Weeki Wachee River System. For purposes of this rule, the Weeki Wachee River System includes the watercourse from the Weeki Wachee Spring to the Gulf of Mexico including Twin Dees Spring, Mud River (including Salt Spring) from Mud Spring to the confluence with the Weeki Wachee River and Jenkins Springs and associated spring run.

(b) The Minimum Flow for the Weeki Wachee River System is 90% of its natural flow. This Minimum Flow is inclusive of spring flow, the freshwater and the estuarine portion of the Weeki Wachee River.

(c) The Minimum Flow applies upstream of the USGS Gage No. 02310525 at Weeki Wachee River near Brooksville ("Brooksville Gage") to the Weeki Wachee Spring vent and downstream of the Brooksville Gage to the Gulf of Mexico. The Minimum Flow shall be met continuously and is evaluated on a daily basis.

(d) Because climatic variation can influence river flow regimes, five and ten year mean and median standards have been developed and are set forth in Table 8-18 ("Means and Medians") as a tool to assess whether compliance with the Minimum Flow maintains 90% of the natural flow of the Weeki Wachee River System. The Means and Medians are hydrologic statistics that represent flows expected to occur during long-term periods when the Minimum Flows are being met. The Means and Medians are generated from flow records that are representative of a period devoid of significant anthropogenic impacts. The District will periodically evaluate the Means and Medians. These are evaluated as the mean and medians of annual means and medians, evaluated from January 1 through December 31 of each year. The evaluation is for both the flow at the Brooksville Gage and at the USGS Weeki Wachee Well No. 283201082315601. The flow at the Brooksville Gage is evaluated directly against Table 8-18. The well data is converted to flow with the relation  $Q \text{ (cfs)} = 47.487 + 12.38 \text{ (well level) (ft)}$  and then evaluated against Table 8-18. The Means and Medians were developed using the Minimum Flow and the presumed historic flow records. Therefore, it is expected that the Means and Medians will be met if compliance with the Minimum Flow is maintained. However, since future structural alterations could potentially affect surface water or groundwater flow characteristics within the watershed and additional information pertaining to Minimum Flows development may become available, the District is committed to periodic review and revision of the Minimum Flows, as necessary.

<u>Criterion</u>	<u>Flow (cfs)</u>
<u>Minimum 10 Year Moving Average (Based On Annual Average Flows)</u>	<u>141</u>
<u>Minimum 10 Year Moving Average (Based On Annual Median Flows)</u>	<u>131</u>
<u>Minimum 5 Year Moving Average (Based On Annual Average Flows)</u>	<u>136</u>
<u>Minimum 5 Year Moving Average (Based On Annual Median Flows)</u>	<u>128</u>

(e) Water Use Permits issued after [effective date of rule] that authorize surface water withdrawals from, or ground water withdrawals that impact Mud Spring, Salt Spring or Jenkins Spring, shall gauge the flow of the applicable spring and report the flow to the District as provided in the Water Use Permit.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.036, 373.0361, 373.042, 373.0421 FS. History—Readopted 10-5-74, Amended 12-31-74, Formerly 16J-0.15, 40D-1.601, Amended 10-1-84, 8-7-00, 2-6-06, 4-6-06, 1-1-07, 11-25-07, 2-18-08, 3-2-08, 5-12-08, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Michael G. Heyl, Chief Environmental Scientist, Resource Projects Department, 7601 Highway 301 N, Tampa, Florida 33637, (813)985-7481, extension 2211  
 NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Southwest Florida Water Management District Governing Board  
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 16, 2008  
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 31, 2008

**WATER MANAGMENT DISTRICTS**

**Southwest Florida Water Management District**

RULE NO.: 40D-8.624  
 RULE TITLE: Guidance and Minimum Levels for Lakes

PURPOSE AND EFFECT: To amend Chapter 40D-8, Florida Administrative Code, to establish minimum levels for Lake Anoka in Highlands County pursuant to Section 373.042, Florida Statutes, to establish current guidance levels for this lake based on current methodologies and to repeal previously adopted guidance levels.

SUMMARY: Establishment of minimum lake levels and guidance levels for Lake Anoka in Highlands County, Florida  
 SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was Prepared.

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

SPECIFIC AUTHORITY: 373.044, 373.113, 373.171 FS.  
 LAW IMPLEMENTED: 373.036, 373.0361, 373.042, 373.0421, 373.086 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Charlotte Edwards, Sr. Administrative Assistant, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4651

THE FULL TEXT OF THE PROPOSED RULE IS:

- 40D-8.624 Guidance and Minimum Levels for Lakes.
- (1) through (11) No change.
- (12) Levels for lakes established during or after August 7, 2000, are set forth in the following table. After the High Minimum Lake Level and Minimum Lake Level elevation for each lake is a designation indicating the Method used, as described in subsection 40D-8.624(8), F.A.C., to establish the level. Compliance with the High Minimum and Minimum Lake Levels is determined pursuant to paragraphs (6)(b) and (7)(b) above. Guidance Levels established prior to August 7, 2000, are set forth in Table 8-3 in subsection 40D-8.624(13), F.A.C., below.

Table 8-2 Minimum and Guidance Levels Established During or After August 7, 2000. Levels are elevations, in feet above the National Geodetic Vertical Datum of 1929.

Location by County and Basin	Name of Lake and Section, Township and Range Information	High Guidance Level	High Minimum Lake Level	Minimum Lake Level	Low Guidance Level
(a) through (h) No change. (i) In Highlands County Within the Peace River Basin	Angelo, Lake S-25, T-33S, R-28E	102.1'	101.3' (CAT 3)	100.0' (CAT 3)	99.6'
	<u>Anoka, Lake S-27, T-33S, R-28E</u>	<u>123.6'</u>	<u>122.8 (CAT 3)</u>	<u>121.7' (CAT 3)</u>	<u>121.2</u>
	Denton, Lake S-02, T-34S, R-28E	114.9'	114.1 (CAT 3)	112.8' (CAT 3)	112.4
	Jackson Lake S-30, T-34S, R-29E	102.6'	102.4' (CAT 3)	101.3' (CAT 3)	100.2'

June-in-Winter, Lake S-34, T-36S, R-29E	74.7'	74.5' (CAT 3)	74.0' (CAT 3)	73.2'
Letta, Lake S-31, T-33S, R-29E	99.5'	99.5' (CAT 3)	98.4' (CAT 3)	97.1'
Little Jackson, Lake S-06, T-35S, R-29E	102.6'	102.4' (CAT 3)	101.3' (CAT 3)	100.2'
Lotela, Lake S-26, T-33S, R-28E	107.5'	106.8' (CAT 3)	105.7' (CAT 3)	105.0'
Placid, Lake S-24, T-37S, R-29E	93.4'	92.6' (CAT 3)	91.4' (CAT 3)	90.9'
Tulane, Lake S-27, T-33S, R-28E	118.7'	117.9' (CAT 3)	116.6' (CAT 3)	116.2'
Verona, Lake S-23, T-33S, R-28E	118.2'	117.4' (CAT 3)	115.8' (CAT 3)	115.1'

(j) through (cc) No change.

(13) Guidance Levels established for lakes prior to August 7, 2000, are set forth in the following table:

Location of Impoundment by County and Basin	Table 8-3 Guidance Water Levels adopted prior to August 7, 2000		
	High Level in Feet Above Mean Sea Level (msl)	Low Level in Feet Above Mean Sea Level (msl)	Extreme Low Level in Feet Above Mean Sea Level (msl)
(a) through (h) No change.			
(i) In Highlands County Within the Peace River Basin LAKES Sec. Twsp. Rng.			
Adelaide, Lake 5, 33S, 28E	106.50'	104.00'	102.50'
<del>Anoka, Lake 27, 33S, 28E</del>	<del>124.00'</del>	<del>122.00'</del>	<del>120.00'</del>
Apthorpe, Lake 18, 36S, 30E	71.50'	68.00'	66.00'
Blue, Lake 30, 36S, 30E	77.50'	75.00'	73.50'
Bonnet, Lake 8, 34S, 29E	90.75'	88.00'	86.00'

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Brentwood, Lake 10, 33S, 28E	102.75'	99.50'	98.00'
Buck, Lake 29, 37S, 30E	94.00'	91.50'	89.50'
Byrd, Lake 9, 33S, 28E	108.25'	105.50'	104.00'
Carrie, Lake 21, 36S, 29E	75.50'	73.00'	72.50'
Charlotte, Lake 17, 35S, 29E	93.75'	91.25'	89.75'
Chilton, Lake 7, 33S, 28E	114.00'	111.00'	109.50'
Clay, Lake 29, 36S, 30E	78.75'	76.00'	75.00'
Crews, Lake 32, 36S, 29E	119.50'	117.00'	115.50'
Damon, Lake 3, 33S, 28E	101.00'	98.00'	95.00'
Dinner, Lake 17, 34S, 29E	102.50'	98.50'	97.00'
Francis, Lake 22, 36S, 29E	70.50'	67.50'	66.50'
Glenada, Lake 34, 33S, 28E	120.00'	117.00'	115.50'
Grassy, Lake 17, 37S, 30E	91.50'	88.50'	87.50'
Harry, Lake 1, 36S, 29E	67.50'	63.00'	62.00'
Henry, Lake 25, 36S, 29E	75.50'	73.00'	72.50'
Hill, Lake 17, 36S, 29E	99.25'	96.00'	94.50'
Huckleberry, Lake 7, 35S, 29E	104.50'	102.00'	101.00'
Huntley, Lake 5, 37S, 30E	83.75'	81.00'	79.50'
Josephine, Lake 32, 35S, 29E	72.50'	69.00'	68.50'
Lake Lachard 36, 36S, 29E	78.50'	76.00'	74.00'
Lelia, Lake 34, 33S, 29E	114.50'	112.50'	110.50'

Little Bonnet, Lake 36, 33S, 28E	100.00'	97.00'	96.00'
Little Red Water, Lake 14, 36S, 29E	103.25'	100.50'	98.50'
Lost, Lake 12, 37S, 29E	88.00'	84.00'	82.75'
McCoy, Lake 6, 37S, 30E	87.00'	84.00'	82.00'
Mirror, Lake 7, 37S, 30E	93.50'	90.00'	88.00'
Center Nellie 13, 36S, 29E	71.50'	67.00'	65.00'
Nellie N.W., Lake 13, 36S, 29E	71.50'	67.00'	65.00'
Nellie S.E., Lake 13, 36S, 29E	71.50'	67.00'	65.00'
Olivia, Lake 6, 33S, 28E	117.50'	114.50'	113.00'
Pearl, Lake 6, 37S, 30E	87.00'	84.00'	82.00'
Persimmon, Lake 10, 36S, 29E	68.25'	65.00'	63.50'
Pioneer, Lake 11, 33S, 28E	108.00'	104.50'	103.00'
Pythias, Lake 2, 33S, 28E	101.00'	98.00'	95.00'
Red Beach Lake 15, 35S, 29E	76.50'	73.75'	72.75'
Red Water Lake 14, 36S, 29E	70.50'	67.50'	66.50'
Ruth, Lake 18, 35S, 29E	94.00'	91.50'	90.00'
Saddlebags, Lake 6, 37S, 30E	84.00'	81.00'	79.00'
Sebring, Lake 14, 34S, 28E	107.25'	104.50'	103.00'
Simmons, Lake 24, 36S, 29E	72.50'	68.00'	66.50'
Sirena, Lake 1, 37S, 29E	87.00'	84.00'	82.00'
Trout, Lake 34, 32S, 28E	101.00'	98.00'	95.00'
Unnamed Lake (B)	91.50'	88.50'	87.50'

20, 37S, 30E

Unnamed Lake (F) 24, 36S, 29E	78.00'	74.00'	72.00'
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Viola, Lake 14, 33S, 28E	109.50'	105.75'	104.00'
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Wolf Lake 24, 35S, 28E	92.50'	90.00'	88.00'
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(j) through (cc) No change.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.036, 373.0361, 373.042, 373.0421, 373.086 FS. History—New 6-7-78, Amended 1-22-79, 4-27-80, 10-21-80, 12-22-80, 3-23-81, 4-14-81, 6-4-81, 10-15-81, 11-23-81, 1-5-82, 3-11-82, 5-10-82, 7-4-82, 9-2-82, 11-8-82, 1-10-83, 4-3-83, 7-5-83, 9-5-83, 10-16-83, 12-12-83, 5-8-84, 7-8-84, 12-16-84, 2-7-85, 5-13-85, 6-26-85, 11-3-85, 3-5-86, 6-16-86, Formerly 16J-8.678, Amended 9-7-86, 2-12-87, 9-2-87, 2-18-88, 6-27-88, 2-22-89, 3-23-89, 9-26-89, 7-26-90, 10-30-90, 3-3-91, 9-30-91, 10-7-91, 7-26-92, 3-1-93, 5-11-94, 6-6-96, 2-23-97, 8-7-00, 1-8-04, 12-21-04 (13), 12-21-04 (13), 6-5-05, 5-2-06, 1-1-07, 2-12-07, 1-10-08, 2-18-08, 4-7-08, 5-20-08,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Doug Leeper, Chief Environmental Scientist, Resource Conservation and Development Department, Southwest Florida Water Management District, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4272

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Southwest Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 4, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 14, 2008

**DEPARTMENT OF THE LOTTERY**

RULE NO.: 53-1.007  
RULE TITLE: Internal Audit Function

PURPOSE AND EFFECT: To update the rule language in accordance with the Florida Statutes.

SUMMARY: The Department proposes to amend this rule to comply with Section 20.055, F.S.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

SPECIFIC AUTHORITY: 24.105(5) FS.

LAW IMPLEMENTED: 20.055 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Faith L. Schneider, Legal Analyst, Department of the Lottery, 250 Marriott Drive, Tallahassee, Florida 32399-4011

THE FULL TEXT OF THE PROPOSED RULE IS:

(Substantial rewording of Rule 53-1.007 follows. See Florida Administrative Code for present text.)

53-1.007 Internal Audit Function.

The Florida Lottery will operate and maintain a system of internal audits as provided in Section 20.055, F.S.

Specific Authority 24.105(5)(6) FS. Law Implemented 20.055 FS. History—New 2-25-93, Amended\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Florida Department of the Lottery

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Kenneth H. Hart, Jr., General Counsel

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 23, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 9, 2009

**AGENCY FOR HEALTH CARE ADMINISTRATION**

**Medicaid**

RULE NO.: 59G-4.002  
RULE TITLE: Medicaid Provider Reimbursement Schedule

PURPOSE AND EFFECT: Rule 59G-4.002, F.A.C., incorporates by reference the Florida Medicaid Provider Reimbursement Schedule, July 2008. The reimbursement schedule contains the procedure codes and maximum fees that are effective July 2008 for the following provider types whose fees are based on a resource-based relative value scale: advanced registered nurse practitioner, birth center, chiropractic, dental, hearing, independent laboratory, licensed midwife, optometric, outpatient hospital laboratory, physician, physician assistant, podiatry, portable x-ray, registered nurse



first assistant, and visual. The effect will be to incorporate by reference in rule the Florida Medicaid Provider Reimbursement Schedule, July 2008.

SUMMARY: The amendment to Rule 59G-4.002, F.A.C., will incorporate by reference the Florida Medicaid Provider Reimbursement Schedule, July 2008. The effect will be to incorporate the Florida Medicaid Provider Reimbursement Schedule, July 2008, in rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Agency has determined that this rule amendment will not result in any additional regulatory costs. The rule amendment is budget neutral.

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

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.905, 409.906, 409.908 FS.

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

DATE AND TIME: Monday, March 2, 2009, 2:00 p.m.

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building #3, Conference Room D, Tallahassee, Florida  
 THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Ouida Mazzoccoli, Bureau of Medicaid Services, 2727 Mahan Drive, Mail Stop 20, Tallahassee, Florida 32308, (850)922-7351, mazzocco@ahca.myflorida.com

THE FULL TEXT OF THE PROPOSED RULE IS:

59G-4.002 Medicaid Provider Reimbursement Schedule. Medicaid providers who provide the following services and their billing agents who submit claims on behalf of an enrolled Medicaid provider must be in compliance with the provisions of the Florida Medicaid Provider Reimbursement Schedule, ~~July~~ ~~January~~ 2008, which is incorporated by reference: advanced registered nurse practitioner, birth center, chiropractic, dental, hearing, independent laboratory, licensed midwife, optometric, outpatient hospital laboratory, physician, physician assistant, podiatry, portable x-ray, registered nurse first assistant, and visual. The Florida Medicaid Provider Reimbursement Schedule is available from the Medicaid fiscal agent's Web Portal at <http://mymedicaid-florida.com>. Click on Public Information for Providers, then on Provider Support, and then on Fee Schedules. Paper copies of the reimbursement schedule may be obtained by calling the Provider Contact Center at (800)298-7799 and selecting Option 7.

Specific Authority 409.919 FS. Law Implemented 409.905, 409.906, 409.908 FS. History—New 8-18-05, Amended 11-30-05, 4-16-06, 10-11-06, 3-27-07, 7-25-07, 9-29-08, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ouida Mazzoccoli

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Holly Benson, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 19, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 10, 2008

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Pilotage Rate Review Board**

RULE NOS.:	RULE TITLES:
61E13-2.002	Pilotage Rates
61E13-2.015	Analysis of Data for Request of Changes of Rates

PURPOSE AND EFFECT: The current rules paraphrase Section 310.151, Florida Statutes and are unnecessary. As such, the rules are being repealed.

SUMMARY: The rules are unnecessary and are being repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board has determined that the proposed rule repeals will not have an impact on small business.

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

SPECIFIC AUTHORITY: 310.151(1)(c) FS.

LAW IMPLEMENTED: 310.151 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Robyn Barineau, Executive Director, Pilotage Rate Review Board, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULES IS:

61E13-2.002 Pilotage Rates.

Specific Authority 310.151(1)(c) FS. Law Implemented 310.151 FS. History—New 8-8-95, Repealed \_\_\_\_\_.

61E13-2.015 Analysis of Data for Request of Changes of Rates.

Specific Authority 310.151(1)(c) FS. Law Implemented 310.151 FS. History—New 8-8-95, Repealed \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Pilotage Rate Review Board  
NAME OF AGENCY HEAD WHO APPROVED THE  
PROPOSED RULE: Pilotage Rate Review Board  
DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: November 19, 2008

**DEPARTMENT OF BUSINESS AND PROFESSIONAL  
REGULATION**

**Construction Industry Licensing Board**

RULE NO.: 61G4-16.001  
RULE TITLE: Written Certification Examination  
Requirements

PURPOSE AND EFFECT: The Board proposes the rule amendment to address the certification exam for solar contractors.

SUMMARY: The rule amendment will address the certification exam for solar contractors.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined that small businesses would not be affected by this rule.

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

SPECIFIC AUTHORITY: 455.217, 489.108 FS.

LAW IMPLEMENTED: 455.217, 489.113 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: G. W. Harrell, Executive Director, Construction Industry Licensing Board, P. O. Box 5257, Tallahassee, Florida 32314-5257

THE FULL TEXT OF THE PROPOSED RULE IS:

61G4-16.001 Written Certification Examination Requirements.

- (1) through (16) No change.
- (17) Certification Examination for Solar Contractors. The certification examination shall consist of two tests.
  - (a) No change.
  - (b) Test two shall consist of questions relating to general knowledge of the solar trade. The content areas to be covered and the approximate weights to be assigned to said areas shall be as follows:
    - 1. ~~25%~~ 40% Swimming Pools;
    - 2. ~~25%~~ 40% Domestic Hot Water; and
    - 3. ~~50%~~ 20% Photovoltaics.
- (18) through (22) No change.

Specific Authority 455.217, 489.108 FS. Law Implemented 455.217, 489.113 FS. History—New 1-6-80, Amended 9-24-84, Formerly 21E-16.01, Amended 5-3-87, 10-4-87, 6-2-88, 12-19-88, 5-23-89, 8-23-89, 2-5-91, 1-29-92, 10-11-92, 5-2-93, Formerly 21E-16.001, Amended 10-17-93, 5-9-95, 11-28-95, 3-11-96, 11-13-97, 4-13-99, 9-12-00, 6-25-03, 6-23-08,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Construction Industry Licensing Board

NAME OF AGENCY HEAD WHO APPROVED THE  
PROPOSED RULE: Construction Industry Licensing Board  
DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: January 15, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: September 26, 2008

**DEPARTMENT OF BUSINESS AND PROFESSIONAL  
REGULATION**

**Construction Industry Licensing Board**

RULE NO.: 61G4-21.005  
RULE TITLE: Payment of Claims

PURPOSE AND EFFECT: The Board proposes the rule amendment to delete unnecessary language and to add language to clarify procedures for payment of claims.

SUMMARY: The rule amendment will delete unnecessary language and to add language to clarify procedures for payment of claims.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined that small businesses would not be affected by this rule.

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

SPECIFIC AUTHORITY: 489.108 FS.

LAW IMPLEMENTED: 489.141, 489.143 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: G. W. Harrell, Executive Director, Construction Industry Licensing Board, P. O. Box 5257, Tallahassee, Florida 32314-5257

THE FULL TEXT OF THE PROPOSED RULE IS:

61G4-21.005 Payment of Claims.

- (1) No change.
- (2) Procedures for disbursements of funds shall not commence until ~~35~~ 45 days after the filing of the Final Order for the Board approving payment of any claim from the recovery fund.

(3) No claimant eligible for, or currently receiving, restitution under a civil or criminal restitution order or other repayment plan shall be eligible to recover from the Fund until two or more payments have been missed. Prior to receiving any payments, such a claimant shall provide the Board with a written statement indicating any affirmation of amount received to date under such an order or plan, the date and amount of the last payment, and how much is still due and owing under such an order or plan.

Specific Authority 489.108 FS. Law Implemented 489.141, 489.143 FS. History—New 7-11-95, Amended 4-27-99, 6-19-03, 7-7-05,

NAME OF PERSON ORIGINATING PROPOSED RULE: Construction Industry Licensing Board  
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Construction Industry Licensing Board  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 9, 2008  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 26, 2008

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Board of Professional Engineers**

RULE NO.: 61G15-35.004  
RULE TITLE: Common Requirements to All Engineers Providing Threshold Building Inspection Services as Special Inspectors

PURPOSE AND EFFECT: Purpose and effect is to clarify requirements for “Authorized Representatives.”

SUMMARY: Requirements for “Authorized Representatives” are clarified.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Board determined that the proposed rule will not have an impact on small business.

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

SPECIFIC AUTHORITY: 471.008, 471.033(2) FS.

LAW IMPLEMENTED: 471.015(7), 471.033 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Carrie Flynn, Executive Director, Board of Professional Engineers, 2507 Callaway Road, Suite 200, Tallahassee, Florida 32301

THE FULL TEXT OF THE PROPOSED RULE IS:

61G15-35.004 Common Requirements to All Engineers Providing Threshold Building Inspection Services as Special Inspectors.

(1) No change.

(2) Special Inspectors utilizing Authorized Representatives shall insure the Authorized Representative is qualified by education or licensure to perform the duties assigned by the Special Inspector. The qualifications shall include licensure as a professional engineer or architect; graduation from an engineering education program in civil or structural engineering; graduation from an architectural education program; successful completion of the NCEES Fundamentals Examination; or licensed registration as building inspector with the Board of Building Code Administrators, Chapter 468, F.S. or licensed general contractor under Chapter 489, F.S.

(3) through (4) No change.

Specific Authority 471.008, 471.033(2) FS. Law Implemented 471.015(7), 471.033 FS. History—New 3-21-01, Amended 4-5-04,

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Professional Engineers

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Professional Engineers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 2, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 16, 2009

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Board of Professional Geologists**

RULE NO.: 61G16-2.005  
RULE TITLE: Procedures for Signing and Sealing Geological Papers, Reports, or Other Documents

PURPOSE AND EFFECT: The Board proposes the rule amendment to delete language from the rule that is no long current and to update Specific Authority and Law Implemented sections of the rule.

SUMMARY: The rule amendment will delete language from the rule that is no long current and to update Specific Authority and Law Implemented sections of the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Board determined that small businesses would not be affected by this rule.

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

SPECIFIC AUTHORITY: 282.72, 492.104, 492.107, 668.003, 668.006 FS.

LAW IMPLEMENTED: 282.75, 492.107, 668.003, 668.006 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rick Morrison, Executive Director, Board of Professional Geologists, P. O. Box 5377, Tallahassee, Florida 32314-5377

THE FULL TEXT OF THE PROPOSED RULE IS:

61G16-2.005 Procedures for Signing and Sealing Geological Papers, Reports or Other Documents.

(1) through (3) No change.

(4) An electronic signature and seal shall be permitted in place of an original seal, signature and date when the following criteria are met: Geological papers, reports or other documents which are required to be signed, dated and sealed under the provisions of Chapter 492, F.S. and which are transmitted, submitted or issued by means of electronic files, may be signed and sealed by creating a "signature" file that contains the professional geologist's name and license number, a brief overall description of the geological papers, reports or other documents in question and a list of the electronic files to be sealed. Each file in the list shall be identified by its file name utilizing relative Uniform Resource Locators (URL) syntax described in the Internet Architecture Board's Request for Comments (RFC) 1738, December 1994, which is hereby adopted and incorporated by reference by the Board and can be obtained from the Internet Website: <http://www.isicdu/in/notes/rfc1738.txt>. Each file shall have an authentication code defined as an SHA-1 message digest described in Federal Information Processing Standard Publication 180-1 "Secure Hash Standard," 1995 April 17, which is hereby adopted and incorporated by reference by the Board and can be obtained from the Internet Website: <http://www.itl.nist.gov/fipspubs/fip180-1.htm>. A report shall be created that contains the professional geologist's name and license number, a brief overall description of the geological papers, reports or other documents in question and the authentication code of the signature file. This report shall be printed and physically signed, dated and sealed by the professional geologist who prepared or issued the geological papers, reports or other documents. The signature file is defined as sealed if its authentication code matches the authentication code on the printed and physically signed, dated and sealed report. Each electronic file listed in a sealed signature file is defined as sealed if the listed authentication code matches the file's computed authentication code.

(a) It is a unique identification of the licensee and shall contain the same information required on a impression or stamp seal including the date that the document is electronically signed and sealed;

(b) It is verifiable;

(c) It is under the licensee's direct and exclusive control;

(d) It is linked to the electronic documents in such a manner that causes changes to be easily determined and visually displayed if any data in the electronic document file is changed subsequent to the electronic signature having been affixed to the electronic document and;

(e) An attempt to change the electronic document after the electronic signature and seal is affixed shall cause the electronic signature to be removed or altered significantly enough to invalidate the electronic signature.

Specific Authority ~~282.75,~~ 492.104, 492.107, ~~668.003,~~ 668.006 FS. Law Implemented ~~282.75,~~ 492.107, 668.003, 668.006 FS. History—New 2-9-00, Amended 3-5-01,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Professional Geologists

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Professional Geologists

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 22, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 7, 2008

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**DEPARTMENT OF JUVENILE JUSTICE**

**Residential Services**

RULE NOS.:	RULE TITLES:
63E-8.001	Purpose and Scope
63E-8.002	Definitions
63E-8.003	Youth Admissions
63E-8.004	Youth Intake
63E-8.005	Youth Orientation
63E-8.006	Quality of Life and Youth Grievance Process
63E-8.007	Youth Hygiene and Dress Code
63E-8.008	Facility and Food Services
63E-8.009	Behavior Management
63E-8.010	Residential Case Management
63E-8.011	Delinquency Intervention and Treatment Services
63E-8.012	Transfer, Release and Discharge
63E-8.013	Safety and Security
63E-8.014	Staff Training
63E-8.015	Program Administration

PURPOSE AND EFFECT: The rule chapter establishes the requirements for the administration and operation of residential expedition programs for juvenile offenders.

SUMMARY: The rule governs the admission, intake, and orientation of youth to expedition programs, as well as the conditions and treatment in such programs. Standards governing safety and security, release, and administrative requirements are also specified.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

SPECIFIC AUTHORITY: 20.316, 985.64, 985.601 FS.

LAW IMPLEMENTED: 985.03, 985.601(3), (8), 985.441 FS.

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

DATE AND TIME: Tuesday, March 3, 2009, 10:00 a.m.

PLACE: DJJ Headquarters, 2737 Centerview Dr., General Counsel's Conference Room 3223, Tallahassee, Florida. To arrange for participation by telephone, contact: John Milla at (850)921-4129

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John Milla, 2737 Centerview Dr., Ste. 3200, Tallahassee, FL 32399-3100, e-mail: john.milla@djj.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

#### 63E-8.001 Purpose and Scope.

This rule chapter establishes the requirements for the department's administration and operation of residential expedition programs for juvenile offenders.

Specific Authority 985.64 FS. Law Implemented 985.03, 985.441, 985.601(3)(a) FS. History--New \_\_\_\_\_.

#### 63E-8.002 Definitions.

The definitions for this rule chapter are consistent with definitions included in Rule 63E-7.002, F.A.C., except for the following additional definitions.

(1) Base Camp – The stationary component of an expedition program where each youth is admitted, screened, assessed, and his or her performance plan developed. Youth are oriented at the base camp and reside there when they are not participating in wilderness excursions. When youth are ready for release from the program, they exit from the base camp.

(2) Wilderness Excursion – The mobile component of an expedition program where youth are away from the base program for at least two weeks participating in a staff-supervised wilderness experience. Youth and staff camp at night in different locations throughout the journey.

Specific Authority 985.64 FS. Law Implemented 985.03, 985.441, 985.601(3)(a) FS. History--New \_\_\_\_\_.

#### 63E-8.003 Youth Admissions.

An expedition program shall admit youth into the program in accordance with the provisions of Rule 63E-7.003, F.A.C.

Specific Authority 985.64 FS. Law Implemented 985.03, 985.441, 985.601(3)(a) FS. History--New \_\_\_\_\_.

#### 63E-8.004 Youth Intake.

An expedition program shall comply with the requirements for youth intake specified in Rule 63E-7.004, F.A.C. However, the program shall request the youth's parent or guardian to send clothes with the youth that are suitable for the outdoor conditions associated with the program's wilderness excursion component. If a youth arrives without proper clothing, the program shall issue appropriately sized clothing suitable for the climate and consistent with the program's dress code.

Specific Authority 985.64 FS. Law Implemented 985.03, 985.441, 985.601(3)(a) FS. History--New \_\_\_\_\_.

#### 63E-8.005 Youth Orientation.

An expedition program shall orient youth to the program in accordance with the provisions of Rule 63E-7.005, F.A.C., with the following exceptions:

(1) During a wilderness excursion, staff shall maintain a copy of the daily schedule and make it available to any youth upon request.

(2) During a wilderness excursion, staff shall maintain copies of the program's behavior management system and resident handbook, including rules governing conduct and negative and positive consequences for behavior. Staff shall make them available to youth upon their request.

Specific Authority 985.64 FS. Law Implemented 985.03, 985.441, 985.601(3)(a) FS. History--New \_\_\_\_\_.

#### 63E-8.006 Quality of Life and Youth Grievance Process.

An expedition program shall comply with the provisions of Rule 63E-7.006, F.A.C., with the following exceptions:

(1) Due to the mobile nature of a wilderness excursion and based on factors such as reasonable accessibility and urgency, an expedition program may limit visitation of any youth on an excursion to the youth's attorney of record, Juvenile Probation Officer (JPO) and clergy. However, the program may deny a visitation request of any of the aforementioned parties if the program determines that the request is not based on a

legitimate and urgent need for the requestor to have face-to-face contact with the youth before he or she returns to the base camp.

(2) The program shall deliver mail and phone messages to youth on wilderness excursions when contact is made to replenish supplies. However, when the base camp receives an emergency telephone call for a youth who is on a wilderness excursion, the program shall deliver or forward a message to the youth as soon as is reasonable and practicable. Wilderness excursion staff shall approve and supervise youths' outgoing telephone calls that shall be limited to emergency situations.

Specific Authority 985.64 FS. Law Implemented 985.03, 985.441, 985.601(3)(a) FS. History--New \_\_\_\_\_.

#### 63E-8.007 Youth Hygiene and Dress Code.

An expedition program shall comply with the provisions of Rule 63E-7.007, F.A.C., with the following exceptions:

(1) Based on the camping environment of an expedition program, its limited access to facilities, and the mobile nature of the program's wilderness excursion component, the program shall establish and implement written procedures addressing youths' personal hygiene, including bathing, hair-washing, and dental hygiene. During excursions, unless medically contraindicated, staff shall provide youth with opportunities to practice dental hygiene twice daily and bathe and wash their hair to the extent that is practicable and reasonable.

(2) An expedition program shall provide each youth with individual hygiene supplies to include, at a minimum, a toothbrush and toothpaste, soap, shampoo, a comb or brush, sun block protection, and feminine hygiene supplies for females.

(3) An expedition program shall provide each youth with a sleeping bag, a sheet and a towel.

(4) An expedition program's dress code for youth shall promote a groomed appearance suitable for the outdoor and wilderness excursion aspects of the program. Due to the camping environment at the base camp and during expeditions, male youth are not required to maintain a clean-shaven appearance.

(5) An expedition program may require youth to wash and maintain their own clothing; however, the program shall provide supervised opportunities and supplies for youth to complete this task.

Specific Authority 985.64 FS. Law Implemented 985.03, 985.441, 985.601(3)(a) FS. History--New \_\_\_\_\_.

#### 63E-8.008 Facility and Food Services.

An expedition program shall comply with the provisions of Rule 63E-7.008, F.A.C. with the following exceptions:

(1) The provisions of subparagraph 63E-7.008(6)(f)1., F.A.C., do not apply to an expedition program when youths' sleeping quarters are in tents. However, the number of youth sleeping in a tent shall not exceed the capacity for which the tent was designed.

(2) The provisions of subparagraphs 63E-7.008(6)(f)2.-8., F.A.C., do not apply to an expedition program.

(3) One of the three meals that an expedition program provides to youth daily shall be served hot. The program may require youth to assist with meal preparations as part of their survival skill training.

(4) Pursuant to Rule 64E-12.001, F.A.C., an expedition program's base camp shall be exempted from subsections 64E-12.005(6) and (7), F.A.C., and its wilderness excursion component shall be exempt from all sections of Chapter 64E-12, F.A.C.

Specific Authority 985.64 FS. Law Implemented 985.03, 985.441, 985.601(3)(a) FS. History--New \_\_\_\_\_.

#### 63E-8.009 Behavior Management.

An expedition program shall comply with the provisions of Rule 63E-7.009, F.A.C. However, during an expedition when room restriction is not an option as a consequence for major infractions, staff may implement an alternative strategy of temporarily separating the youth from the group for up to four hours while providing sight and sound supervision. When separated from the group, the youth shall not be denied basic rights, including meals. Staff shall engage, or attempt to engage, the youth in productive interactions about his or her negative behavior that resulted in separation from the group and alternative prosocial behaviors. Additionally, staff shall use strategies, such as conflict resolution and constructive dialogue, to facilitate the youth's reintegration into the group. Staff shall document the youth's separation from the group, including the name of the youth, the precipitating infraction or behavior, the name of the staff who decided to implement the strategy, the name of the staff who provided sight and sound supervision, beginning and ending dates and times, and staff actions to facilitate reintegration of the youth.

Specific Authority 985.64 FS. Law Implemented 985.03, 985.441, 985.601(3)(a) FS. History--New \_\_\_\_\_.

#### 63E-8.010 Residential Case Management.

An expedition program shall comply with the provisions of Rule 63E-7.010, F.A.C., with the following exceptions:

(1) The program shall ensure completion of a youth's initial screening, assessment and performance plan prior to the youth leaving the base camp to participate in a wilderness excursion or within 30 days of admission, whichever comes first.

(2) When a youth returns to the base camp from a wilderness excursion less than 14 days prior to his planned release, the program shall conduct the exit conference at least

48 hours prior to the youth's release. However, the program may conduct the exit conference 24 hours prior to the youth's release if necessary to accommodate the youth's JPO, parent, or guardian and facilitate their participation.

(3) The program shall disseminate the youth's Discharge Performance Summary to the youth's parent or guardian, the committing judge, and the youth's JPO within five days after the youth's graduation or release from the program.

Specific Authority 985.64 FS. Law Implemented 985.03, 985.441, 985.601(3)(a) FS. History--New \_\_\_\_\_.

63E-8.011 Delinquency Intervention and Treatment Services.

An expedition program shall comply with the provisions of Rule 63E-7.011, F.A.C.

Specific Authority 985.64 FS. Law Implemented 985.03, 985.441, 985.601(3)(a) FS. History--New \_\_\_\_\_.

63E-8.012 Transfer, Release and Discharge.

An expedition program shall comply with the transfer, release and discharge requirements specified in Rule 63E-7.012, F.A.C., except that the program shall forward the Pre-Release Notification and Acknowledgement form (RS-008, September 2006), with the pre-release notification section completed, to a youth's JPO prior to the youth leaving the base camp to participate in a wilderness excursion, and the discharge performance summary may be submitted after the youth leaves the program.

Specific Authority 985.64 FS. Law Implemented 985.03, 985.441, 985.601(3)(a) FS. History--New \_\_\_\_\_.

63E-8.013 Safety and Security.

An expedition program shall comply with the provisions of Rule 63E-7.012, F.A.C., with the following exceptions:

(1) Although staff-to-youth ratios in an expedition program shall be consistent with Rule 63E-7.013, F.A.C., awake supervision and 10-minute checks are not required when staff and youth share a campsite.

(2) Consistent with subsection 63E-8.006(1), F.A.C., an expedition program may limit visitation of any youth engaged in a wilderness excursion.

(3) During a wilderness excursion, boat paddles and shovels that are not in use shall be stored in an area that provides for direct line-of-sight observation by staff to prevent youths' unauthorized access.

(4) Since it may not be possible to totally restrict youths' access to areas where flammable, poisonous and toxic items are stored during a wilderness excursion, staff shall be present when youth are in these areas to prevent them from accessing or handling these items.

(5) Expedition program staff supervising youth on a wilderness excursion involving water-related activities shall be certified as specified in subparagraph 63E-7-013(22)(b)1.,

F.A.C., or certified through successful completion of Outward Bound's Wilderness First Responder and Emergency Water Safety Course.

Specific Authority 985.64 FS. Law Implemented 985.03, 985.441, 985.601(3)(a) FS. History--New \_\_\_\_\_.

63E-8.014 Staff Training.

Staff training requirements for expedition programs are consistent with those specified in Chapters 63H-1 and 63H-2, F.A.C.

Specific Authority 985.64 FS. Law Implemented 985.03, 985.441, 985.601(3)(a) FS. History--New \_\_\_\_\_.

63E-8.015 Program Administration.

Expedition programs shall be administered in accordance with the provisions set forth in Rule 63E-7.016, F.A.C.

Specific Authority 985.64 FS. Law Implemented 985.03, 985.441, 985.601(3)(a) FS. History--New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:

Joan Wimmer, DJJ Residential Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Frank Peterman, Jr., DJJ Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 27, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 9, 2009

**DEPARTMENT OF HEALTH**

**Board of Podiatric Medicine**

RULE NO.:

64B18-16.006

RULE TITLE:

Registration Requirements of Podiatric Residents

PURPOSE AND EFFECT: The Board proposes the rule amendment in order to incorporate the Podiatric Resident Registration form.

SUMMARY: The Podiatric Registration form will be incorporated into the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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

SPECIFIC AUTHORITY: 461.005, 461.014(3) FS.

LAW IMPLEMENTED: 461.014(3) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Podiatric Medicine, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3258

THE FULL TEXT OF THE PROPOSED RULE IS:

64B18-16.006 Registration Requirements of Podiatric Residents.

(1) Every podiatric resident participating in a residency program in a hospital in this state shall register ~~the following information~~ with the Board within sixty (60) days of the date of commencement of residency:

~~(a) The name and current mailing address of the resident.~~

~~(b) A physical description of the resident to include the resident's birthdate, the resident's height, weight, color of hair and color of eyes, and a 2" x 2" I.D. type full face view photograph.~~

~~(c) The name and address of the hospital, and the date upon which the residency was commenced and the anticipated date of completion.~~

~~(d) The name of the school from which the resident received his or her DPM degree, the date on which such degree was conferred, and a certified copy of the resident's final transcript.~~

~~(e) Whether or not the resident has made application for the Florida licensure examination.~~

~~(f) Whether or not the resident holds a valid license to practice podiatry in any other state of the United States or in any foreign country. If so, the resident must submit verification of such licensure from the regulatory agency on forms provided by this Board using the Podiatric Resident Registration form DH-MQA 1139 (revised 12/08), hereby adopted and incorporated by reference, that can be obtained from the Board of Podiatric Medicine's website at <http://www.doh.state.fl.us/mqa/podiatry/index.html>.~~

(2) No change.

Specific Authority 461.005, 461.014(3) FS. Law Implemented 461.014(3) FS. History—New 11-24-80, Formerly 21T-16.06, 21T-16.006, 61F12-16.006, Amended 1-4-96, Formerly 59Z-16.006, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Podiatric Medicine

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Podiatric Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 12, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 31, 2008

**DEPARTMENT OF HEALTH**

**Division of Disease Control**

RULE NO.: RULE TITLE:

64D-4.002 Definitions

PURPOSE, EFFECT AND SUMMARY: This rule chapter is amended to update the effective date of the federal poverty level (FPL) from February 2008 to January 2009, to comply with the most current federal poverty level standards. The U.S. Department of Health and Human Services updates the federal poverty level annually which is used for eligibility purpose for the HIV/AIDS Patient Care Programs to better serve low-income persons living with HIV disease.

SPECIFIC AUTHORITY: 381.0011(13) FS.

LAW IMPLEMENTED: 381.001(1), 381.003(1)(c), 381.0011(5) FS.

THIS RULEMAKING IS UNDERTAKEN PURSUANT TO SECTION 120.54(6), F.S. WRITTEN COMMENTS MAY BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO: Joseph P. May, Program Administrator, Department of Health, Division of Disease Control, Bureau of HIV/AIDS, Patient Care, 2585 Merchants Row Boulevard, 3rd Floor, Room 345, Tallahassee, Florida 32399-1715

SUBSTANTIALLY AFFECTED PERSONS MAY WITHIN 14 DAYS OF THE DATE OF THIS NOTICE, FILE AN OBJECTION TO THIS RULEMAKING WITH THE AGENCY. THE OBJECTION SHALL SPECIFY THE PORTIONS OF THE PROPOSED RULE TO WHICH THE PERSON OBJECTS AND THE SPECIFIC REASONS FOR THE OBJECTION.

THE FULL TEXT OF THE PROPOSED RULE IS:

64D-4.002 Definitions.

For the purpose of this rule chapter, the words and phrases listed below are defined in the following manner:

(1) through (8) No change.

(9) "Federal Poverty Level" (FPL) means the poverty income levels (effective January 2009 ~~February 2008~~) as published by the U.S. Department of Health and Human Services (HHS), Federal Office of Management and Budget (OMB), which is incorporated by reference. The federal poverty guidelines are located on the Department of Health, Bureau of HIV/AIDS website, at [http://www.doh.state.fl.us/disease\\_ctrl/aids/care/EligibilityAdRule.html](http://www.doh.state.fl.us/disease_ctrl/aids/care/EligibilityAdRule.html) and the U.S. Department of Health and Human Services website at: <http://aspe.hhs.gov/poverty/09poverty.shtml> or can be obtained at any Florida county health department.

(10) through (15) No change.

Specific Authority 381.0011(13) FS. Law Implemented 381.001(1), 381.003(1)(c), 381.0011(5) FS. History—New 1-23-07, Amended 8-31-07, 3-21-08, 10-27-08, \_\_\_\_\_.