

SUBJECT AREA TO BE ADDRESSED: Career and Technical Education.

RULEMAKING AUTHORITY: 1008.43 FS.

LAW IMPLEMENTED: 1008.43 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Tara Goodman, Bureau Chief, Budget, Accountability and Assessment, 325 West Gaines St., Suite 744, Tallahassee, FL 32399-0400, (850)245-9002, tara.goodman@fldoe.org. To request a rule development workshop, please contact: Lynn Abbott, Agency Clerk, Department of Education, (850)245-9661 or e-mail lynn.abbott@fldoe.org or go to <https://app1.fldoe.org/rules/default.aspx>.

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

EXECUTIVE OFFICE OF THE GOVERNOR

Office of Tourism, Trade and Economic Development

RULE NOS.:	RULE TITLES:
27M-3.001	Definitions and Forms
27M-3.002	Application Process
27M-3.003	Certification Decision

PURPOSE AND EFFECT: To implement the Black Business Loan Program pursuant to Section 288.7102, F.S.

SUBJECT AREA TO BE ADDRESSED: Black Business Loan Program.

RULEMAKING AUTHORITY: 288.7102(7) FS.

LAW IMPLEMENTED: 288.7102 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Michelle Dennard, Office of Tourism, Trade, and Economic Development, Suite 1902, The Capitol, Tallahassee, Florida 32399, (850)487-2568, michelle.dennard@eog.myflorida.com

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

**Section II
Proposed Rules**

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE NOS.:	RULE TITLES:
12A-1.018	Trade and Cash Discounts
12A-1.074	Trade-Ins

PURPOSE AND EFFECT: Rule 12A-1.074, F.A.C. (Trade-Ins), provides that, for a trade-in credit to be allowed against the sales price of an item, any used article to be taken in trade must be taken “at the time of sale.” In Department of Revenue v. Gamestop, Inc. (Case No. 1D10-2899, November 18, 2010), the appellate court affirmed that the phrase “at the time of sale” effectively negates Section 212.09, F.S., and is an invalid exercise of delegated legislative authority. The purpose of the proposed amendments to this rule is to remove the phrase “at the time of sale.”

The subject of the provisions of Rule 12A-1.018, F.A.C. (Trade and Cash Discounts), is discounts, not trade-ins. The purpose of the proposed amendments to this rule is to remove the unnecessary reference to the term “trade-ins,” consistent with the court’s ruling in Department of Revenue v. Gamestop, Inc. SUMMARY: The proposed amendments to Rule 12A-1.018, F.A.C. (Trade and Cash Discounts), remove the unnecessary reference to “trade-ins” from the rule.

The proposed amendments to Rule 12A-1.074, F.A.C. (Trade-Ins), remove provisions which require that, for a trade-in credit to be allowed against the sales price of an item, the item taken in trade must be taken “at the time of sale.”

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. An SERC has not been prepared by the agency.

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.

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

LAW IMPLEMENTED: 212.02(15), (16), 212.07(2), (3), 212.09, 212.12(9) FS.

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

DATE AND TIME: June 1, 2011, 10:00 a.m.

PLACE: 2450 Shumard Oak Boulevard, Building One, Room 2503, 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: Tammy Miller at (850)617-8346. 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: French Brown, Deputy Director, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-6309

THE FULL TEXT OF THE PROPOSED RULE IS:

12A-1.018 Trade and Cash Discounts.

(1) No change.

(2) ~~Discounts Trade-ins or discounts~~ allowed and taken at the time of sale are deducted from the selling price, and the tax is due on the net amount paid at the time of sale. Discounts granted for payment within a specified period or upon a specified later date are not deemed discounts at the time of sale, and may not be deducted from the selling price for purposes of computing the tax.

(3) through (4) No change.

Rulemaking Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(16), 212.07(2), 212.12(9) FS. History—Revised 10-7-68, 6-16-72, Amended 6-3-80, Formerly 12A-1.18, Amended 6-19-01,_____.

12A-1.074 Trade-Ins.

(1) Where used articles of tangible personal property, accepted and intended for resale, are taken in trade, or a series of trades, ~~at the time of sale~~, as a credit or part payment on the sale of new articles of tangible personal property, the tax levied by Chapter 212, F.S., shall be paid on the sales price of the new article of tangible personal property, less credit for the used article of tangible personal property taken in trade. A separate or independent sale of tangible personal property is not a trade-in, even if the proceeds from the sale are immediately applied by the seller to a purchase of new articles of tangible personal property.

(2) Where used articles of tangible personal property, accepted and intended for resale, are taken in trade, or a series of trades, ~~at the time of sale~~, as a credit or part payment on the sale of used articles, the tax levied by Chapter 212, F.S., shall be paid on the sales price of the used article of tangible personal property, less credit for the used articles of tangible personal property taken in trade. A separate or independent sale of tangible personal property is not a trade-in, even if the proceeds from the sale are immediately applied by the seller to a purchase of new articles of tangible personal property.

(3) No change.

Rulemaking Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(15), (16), 212.07(2), (3), 212.09 FS. History—Revised 10-7-68, 6-16-72, Amended 12-11-74, Formerly 12A-1.74, Amended 1-2-89,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: French Brown, Deputy Director, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-6309

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor and Cabinet

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 3, 2011

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on March 18, 2011 (Vol. 37, No. 11, pp. 661-662). No comments were received by the Department.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE NO.:	RULE TITLE:
12A-1.061	Rentals, Leases, and Licenses to Use Transient Accommodations

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-1.061, F.A.C. (Rentals, Leases, and Licenses to Use Transient Accommodations), is to include the provisions regarding timeshares provided in Chapter 2009-133, L.O.F. This law provides that timeshare exchanges and fees charged by a third party to facilitate a timeshare exchange are not subject to tax. The law also provides when fees charged to occupy and inspect a regulated short-term timeshare product are subject to tax. When in effect, this rule will provide for the taxability of the purchase of a timeshare interest, the rental of a timeshare accommodation, the occupancy pursuant to the purchase of a regulated short-term product, and the fees charged by timeshare exchange programs.

SUMMARY: The proposed amendments to Rule 12A-1.061, F.A.C. (Rentals, Leases, and Licenses to Use Transient Accommodations), pursuant to Section 212.03(1), F.S., as amended by Section 3, Chapter 2009-133, L.O.F., provide: (1) when consideration paid for the purchase of a timeshare, for the rental or occupancy of a timeshare, and for regulated short-term products is subject to tax; and (2) that consideration paid to an exchange program by a timeshare owner for the use or occupancy of an accommodation is not subject to tax.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. An SERC has not been prepared by the agency.

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.

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

LAW IMPLEMENTED: 92.525(1)(b), 119.071(5), 212.02(2), (10)(a)-(g), (16), 212.03(1), (2), (3), (4), (5), (7), 212.031, 212.04(4), 212.08(6), (7)(i), (m), 212.11(1), (2), 212.12(7), (9), (12), 212.13(2), 212.18(2), (3), 213.37, 213.756 FS.

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

DATE AND TIME: June 1, 2011, 10:00 a.m.

PLACE: 2450 Shumard Oak Boulevard, Building One, Room 2503, 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: Tammy Miller at (850)617-8346. 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: Tammy Miller, Senior Attorney, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-7105

THE FULL TEXT OF THE PROPOSED RULE IS:

12A-1.061 Rentals, Leases, and Licenses to Use Transient Accommodations.

(1) through (3) No change.

(a) through (g) No change.

(h) The following is a non-inclusive list of charges separately itemized on a guest's or tenant's bill, invoice, or other tangible evidence of sale that are NOT rental charges or room rates for transient accommodations:

1. through 13. No change.

~~14. Consideration paid by a timeshare owner for purchase of a timeshare estate, as defined in Section 721.05, F.S. Consideration paid under a timeshare license, as defined in Section 721.05, F.S., is rental charges or room rates and is subject to tax.~~

~~14.15. No change.~~

(4) through (6) No change.

(7) TIMESHARES.

(a) Purchase of a timeshare interest.

1. Consideration paid for the purchase of a timeshare estate, as defined in Section 721.05, F.S., is not rent and is not subject to tax.

2. Consideration paid for the purchase of a timeshare license, as defined in Section 721.05, F.S., is rent and is subject to tax.

(b) Rental of a timeshare accommodation. Consideration paid for the use or occupancy of an accommodation in a timeshare property is rent and is subject to tax. Consideration paid for a regulated short-term product or a timeshare exchange is addressed below.

(c) Regulated short-term products. Consideration paid for occupancy pursuant to a regulated short-term product, as defined in Section 721.05, F.S., is rent and is subject to tax, unless the consideration paid is applied to the purchase of a timeshare estate. Tax is due on the last day of occupancy pursuant to the regulated short-term product.

(d) Timeshare exchange programs.

1. A typical timeshare exchange program allows timeshare owners the right to deposit their timeshares into the exchange program pool. After depositing his or her timeshare into the exchange program pool, an owner may request the use of a different timeshare. An owner making a request will specify the type of unit desired (e.g., one-bedroom, oceanfront) and the location at which he or she would like to stay (e.g., Honolulu, Cancun, Miami), but will generally not request the use of a specific timeshare unit. A timeshare owner who joins an exchange program pays a membership fee to be a part of the exchange program. An owner also pays an exchange fee to request an exchange of a timeshare under the program. The requesting owner may also pay an upgrade fee if the exchange program determines that the requesting owner's timeshare is of a lesser value than the timeshare being requested.

2.a. Consideration paid for the use or occupancy of an accommodation in a timeshare property by a timeshare owner to an exchange program is not subject to tax.

b. Example: Mr. Smith purchases a two-bedroom timeshare in Orlando and becomes a member of an exchange program. Mr. Smith pays an annual membership fee of \$500 to be a member of the exchange program, which must be paid whether or not Mr. Smith requests the use of another timeshare from the exchange program pool. Mr. Smith decides to vacation in Miami, and he submits an exchange request to the exchange program. As part of his exchange request, Mr. Smith specifically requests a four-bedroom timeshare unit. Mr. Smith pays a \$99 exchange fee and a \$250 upgrade fee to the exchange program for the four-bedroom unit. No tax is due on the membership fee, the exchange fee, or the upgrade fee paid by Mr. Smith.

(7) through (19) renumbered (8) through (20) No change.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 92.525(1)(b), 119.071(5), 212.02(2), (10)(a)-(g), (16), 212.03(1), (2), (3), (4), (5), (7), 212.031, 212.04(4), 212.08(6), (7)(i), (m), 212.11(1), (2), 212.12(7), (9), (12), 212.13(2), 212.18(2), (3), 213.37, 213.756 FS. History—Revised 10-7-68, 1-7-70, Amended 1-17-71, Revised 6-16-72, Amended 7-19-72, 4-19-74, 12-11-74, 5-27-75, 10-18-78, 4-11-80, 7-20-82, 1-29-83, 6-11-85, Formerly 12A-1.61, Amended 10-16-89, 3-17-94, 1-2-95, 3-20-96, 11-30-97, 7-1-99, 3-4-01(4), 3-4-01(2), (5), (14), 10-2-01, 8-1-02, 9-1-09, 6-28-10,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Tammy Miller, Senior Attorney, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-7105

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor and Cabinet

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 19, 2011

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Rule Development was published in the Florida Administrative Weekly on May 28, 2010 (Vol. 36, No. 21, pp. 2421-2422). A rule development workshop was held June 24, 2010. Comments were received, and changes were made to the proposed rule text. A Notice of Rule Development Workshop was published in the Florida Administrative Weekly on September 24, 2010 (Vol. 36, No. 38, pp. 4559-4560). A rule development workshop was held October 11, 2010. Comments were received, and changes were made to the proposed rule text.

DEPARTMENT OF REVENUE

Miscellaneous Tax

RULE NOS.:	RULE TITLES:
12B-5.130	Refunds
12B-5.150	Public Use Forms

PURPOSE AND EFFECT: Section 206.8745(6), F.S., grants a refund, as provided by rule, for undyed tax-paid diesel fuel that is consumed by a power take-off unit or engine exhaust for the purpose of unloading bulk cargo by pumping when the power take-off unit or engine exhaust is mounted on a motor vehicle that has no separate fuel tank. The purpose of this rulemaking is to provide the standards for granting refunds of the tax paid on undyed diesel fuel that is consumed by a power take-off unit or engine exhaust for the purpose of unloading bulk cargo by pumping using a hydraulic, pneumatic, or any other kind of pump. When in effect, proposed Rule 12B-5.130, F.A.C. (Refunds), and the proposed revisions to Form DR-309639, Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes, incorporated by reference in Rule 12B-5.150, F.A.C. (Public Use Forms), will provide how a refund of tax paid on diesel fuel used by a power take-off unit or engine exhaust for the purpose of unloading bulk cargo by pumping will be granted by the Department.

SUMMARY: The proposed amendments to Rule 12B-5.130, F.A.C. (Refunds), and the proposed revisions to Form DR-309639, Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes, incorporated by reference in Rule 12B-5.150, F.A.C. (Public Use Forms), provide: (1) the types of vehicles that qualify for the refund of tax paid on diesel fuel pursuant to subsection 206.8745(6), F.S.; (2) the information that will be required for each qualified vehicle when submitting Form DR-309639 to the Department; (3) the qualified vehicle’s percentage of fuel consumed for purposes of unloading bulk cargo by pumping; (4) how to determine the gallons of undyed diesel fuel that are eligible for refund; and (5) how to determine the amount of tax refund due.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. An SERC has not been prepared by the agency.

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.

RULEMAKING AUTHORITY: 206.14(1), 206.485(1), 206.59(1), 213.06(1), 213.755(8), 526.206 FS.

LAW IMPLEMENTED: 119.071(5), 206.02, 206.021, 206.022, 206.025, 206.026, 206.027, 206.028, 206.05, 206.055, 206.06, 206.095, 206.11, 206.404, 206.41(4), (5), 206.43(5), (6), 206.44, 206.485, 206.64, 206.86, 206.874, 206.8745, 206.877, 206.90, 206.91, 206.92, 206.97, 206.9835, 206.9865, 206.9931, 206.9942, 206.9943, 212.0501, 213.255, 213.755, 526.203 FS.

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

DATE AND TIME: June 1, 2011, 10:00 a.m.

PLACE: 2450 Shumard Oak Boulevard, Building One, Room 2503, 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: Tammy Miller at (850)617-8346. 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)717-6745

THE FULL TEXT OF THE PROPOSED RULES IS:

12B-5.130 Refunds.

(1) No change.

(2) UNDYED DIESEL FUEL USED FOR OFF-ROAD PURPOSES OR OTHER EXEMPT PURPOSES.

(a) When undyed diesel fuel is consumed by a power take-off unit or engine exhaust for the purpose of turning a concrete mixer drum, for compacting solid waste, or for unloading bulk cargo by pumping, and such power take-off unit or engine exhaust is mounted on a motor vehicle that has no separate fuel tank, tax paid on the diesel fuel will be subject to a refund.

1. A refund of tax paid on undyed diesel fuel will be granted on thirty-five percent of the gallons consumed by vehicles that use fuel to turn a concrete mixer drum or for compacting solid waste. Sales tax imposed under Section 212.0501, F.S., plus any applicable discretionary sales surtax, is due on the average cost per gallon that is eligible for a refund of fuel tax paid. The Department will reduce the amount of refund due on fuel tax paid by the amount of sales tax, plus any applicable discretionary sales surtax, due. The net amount of the refund will be granted to the qualified applicant.

2. A refund of tax paid on undyed diesel fuel will be granted based on a percentage of the total gallons consumed by vehicles that use undyed diesel fuel for unloading bulk cargo by pumping. Sales tax imposed under Section 212.0501, F.S., plus any applicable discretionary sales surtax, is due on the average cost per gallon, as computed in Schedule 1B, Form DR-309639, Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes, that is eligible for a refund of fuel tax paid. The Department will reduce the amount of refund due on the fuel tax paid by the amount of sales tax, plus any applicable discretionary sales surtax, due. The net amount of the refund will be granted to the qualified applicant.

(b) through (c) No change.

(d)1. Persons seeking a refund of tax paid on undyed diesel for off-road or other exempt purposes must file an Form DR-309639, Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes (Form DR-309639, incorporated by reference in Rule 12B-5.150, F.A.C.) with the Department.

2. No change.

(e) No change.

(3) through (5) No change.

Rulemaking Authority 206.14(1), 206.59(1), 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, 10-27-98, 5-1-06, 1-27-09, 6-1-09,_____.

Cross Reference – Rules 12A-1.059 and 12A-1.0641, F.A.C.

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
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(2) through (36) No change.

(37) DR-309639	Application for Refund of Tax Paid on Undyed /Diesel Used for Off-Road or Other Exempt Purposes (with Instructions)	
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(R. ~~01/11~~) ~~01/11~~

(38) through (41) No change.

Rulemaking Authority 206.14(1), 206.485(1), 206.59(1), 213.06(1), 213.755(8), 526.206 FS. Law Implemented 119.071(5), 206.02, 206.021, 206.022, 206.025, 206.026, 206.027, 206.028, 206.05, 206.055, 206.06, 206.095, 206.11, 206.404, 206.41, 206.43, 206.44, 206.485, 206.86, 206.874, 206.8745, 206.877, 206.90, 206.91, 206.92, 206.9835, 206.9865, 206.9931, 206.9942, 206.9943, 212.0501, 213.255, 213.755, 526.203 FS. History–New 11-21-96, Amended 10-27-98, 5-1-06, 4-16-07, 1-1-08, 1-27-09, 4-14-09, 6-1-09, 6-1-09(5), 1-11-10, 7-28-10, 1-12-11,_____.

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)717-6745

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor and Cabinet

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 3, 2011

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on December 12, 2008 (Vol. 34, No. 52, p. 6416). A rule development workshop was conducted on February 9, 2009, and comments were received. A second Notice of Proposed Rule Development was published in the Florida Administrative Weekly on March 18, 2011 (Vol. 37, No. 11, p. 662). A rule development workshop was conducted on April 4, 2011. Comments were received from the public in support of the proposed rule amendments.

DEPARTMENT OF REVENUE

Corporate, Estate and Intangible Tax

RULE NO.: RULE TITLE:

12C-1.013 Adjusted Federal Income Defined

PURPOSE AND EFFECT: Rule 12C-1.013, F.A.C. (Adjusted Federal Income Defined), currently reflects the provisions of Section 220.13(1)(a)1., F.S., which requires an addition to federal taxable income equal to the amount of any tax upon or measured by income for Florida corporate income tax purposes. Subsection (5) of the rule provides that value-added

taxes are not required to be added back to federal income for purposes of computing the Florida corporate income tax. The Michigan single business tax is included as an example of a value-added tax. On January 1, 2008, Michigan replaced its single business tax with a business tax based on income. The purpose of the proposed amendments to Rule 12C-1.013, F.S., is to remove provisions regarding the now obsolete Michigan single business tax.

SUMMARY: The proposed amendments to Rule 12C-1.013, F.A.C., remove the obsolete Michigan single business tax that is currently included as an example of a value-added tax that is not considered a tax upon or measured by income for purposes of Section 220.13(1)(a)1., F.S.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. An SERC has not been prepared by the agency.

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.

RULEMAKING AUTHORITY: 213.06(1), 220.51 FS.

LAW IMPLEMENTED: 220.13 FS.

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

DATE AND TIME: June 1, 2011, 10:00 a.m.

PLACE: 2450 Shumard Oak Boulevard, Building One, Room 2503, 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: Tammy Miller at (850)617-8346. 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: Debra Gifford, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-6752

THE FULL TEXT OF THE PROPOSED RULE IS:

12C-1.013 Adjusted Federal Income Defined.

(1) through (4) No change.

(5)(a) An addition is required by Section 220.13(1)(a)1., F.S., to federal taxable income equal to the amount of any tax upon or measured by income, paid or accrued as a liability to any state of the United States or to the District of Columbia,

which is deductible from gross income in the computation of taxable income for the taxable year. There is no addition required for tax paid to a political subdivision of a state (for example, a city or county) or to the Commonwealth of Puerto Rico, or any territory or possession of the United States, or any foreign country.

(b) The intent of the Legislature when this provision was enacted was to prevent an erosion of the Florida tax base by the amount of the federal tax benefit obtained by paying state income taxes. Therefore, the taxpayer will only be required to add back the amount actually deducted, not an amount that could have been deducted. For example, a taxpayer pays corporate income taxes in 20 states. In computing the deduction allowable for federal purposes, the taxpayer forgets the income tax paid to Georgia. In computing the Florida corporate income tax, the taxpayer only adds back the tax deducted for the 19 states. There is no addback for the Georgia income tax that was not deducted for federal purposes, but was deductible under the Internal Revenue Code. If this error is later discovered, the Department will not require an addback of the amount of the Georgia tax.

(c) For purposes of this subsection, value added taxes; ~~such as the Michigan single business tax,~~ will not be construed to be a tax upon or measured by income.

(6) through (21) No change.

Rulemaking Authority 213.06(1), 220.51 FS., s. 4, Ch. 2009-18, s. 3, Ch. 2009-192, L.O.F. Law Implemented 220.02(3), 220.03(5), 220.13, 220.131(1), 220.43(1), (3) FS. History—New 10-20-72, Amended 1-19-73, 10-20-73, 10-8-74, 4-21-75, 5-10-78, 11-13-78, 12-18-83, Formerly 12C-1.13, Amended 12-21-88, 12-7-92, 5-17-94, 10-19-94, 3-18-96, 10-2-01, 4-14-09, 6-28-10, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Debra Gifford, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-6752

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor and Cabinet

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 3, 2011

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on March 18, 2011 (Vol. 37, No. 11, pp. 662-663). No comments were received by the Department.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Hotels and Restaurants

RULE NO.: RULE TITLE:

61C-5.0085 Continuing Education Requirements

PURPOSE AND EFFECT: The purpose of the proposed rule is to remove barriers to business and improve bureau processes for continuing education approval and reporting. The effect of

the proposed rule is to expand the opportunity to become a registered continuing education provider, adopt the application form, identify application requirements in rule, specifically allow courses to be provided through distance learning and provide minimum requirements for distance learning courses.

SUMMARY: The proposed rule strikes specific education and experience and related requirements from the continuing education provider requirements; allows the division to audit registered providers; adopts the application form and documentation requirements; allows the division to review and audit approved courses; provides minimum requirements for distance learning courses; updates course certificate requirements; and prohibits using the state seal, department logo, or representing division endorsement in advertisements.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. An SERC has not been prepared by the agency.

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.

RULEMAKING AUTHORITY: 399.01, 399.02, 399.10 FS.

LAW IMPLEMENTED: 399.01(16), 399.17 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: Michelle Comingore, Operations Review Specialist, Division of Hotels and Restaurants, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1011, Telephone: (850)488-1133

THE FULL TEXT OF THE PROPOSED RULE IS:

61C-5.0085 Continuing Education Requirements.

(1) Continuing Education Requirements.

(a) To renew a ~~g~~Certificate of ~~g~~Competency, ~~a Certified Elevator Technician~~, or a ~~g~~Certified ~~g~~Elevator ~~i~~nspector credential issued by the ~~division bureau~~ pursuant to Chapter 399, F.S., ~~that requires continuing education~~, a person must submit, in addition to the other requirements specified in Rule 61C-5.007, F.A.C., required application and fee, proof of completion within the current annual licensure period of 8 hours of approved continuing education, including at least one course hour related to safety in elevator construction, alteration, modification, repair or maintenance.

(b) A person holding more than one individual credential issued by the ~~division bureau~~ that requires continuing education need only complete a total of 8 hours of continuing education during each annual period, but must submit proof of completion of the continuing education with each application submitted to the ~~division bureau~~ for renewal of the credentials.

(c) A person initially certified or registered by the ~~division bureau~~ 180 days or more prior to the renewal deadline must complete 4 hours of approved continuing education as a condition of renewal.

(d) A person initially certified or registered by the ~~division bureau~~ for less than 180 days prior to the renewal deadline need not complete any approved continuing education as a condition of renewal.

(2) Course Provider Registration Approval.

(a) Each course provider must register with ~~and obtain approval from~~ the bureau to ~~appoint instructors and~~ conduct courses that satisfy continuing education requirements of Chapter 399, F.S., by submitting DBPR Form HR 5023-017 APPLICATION FOR COURSE PROVIDER REGISTRATION AND COURSE APPROVAL, incorporated herein by reference and effective 2011 April 11. Instructions for completing DBPR Form HR 5023-017 are available in DBPR Form HR 5023-017i, INSTRUCTIONS FOR COMPLETING DBPR Form HR 5023-017 APPLICATION FOR COURSE PROVIDER REGISTRATION AND COURSE APPROVAL, incorporated herein by reference and effective 2011 April 11. Copies of these forms are available from the Division of Hotels and Restaurants Internet website at www.MyFloridaLicense.com/dbpr/hr; by e-mail to dhr.elevators@dbpr.state.fl.us; or upon written request to the Division of Hotels and Restaurants, Bureau of Elevator Safety, 1940 North Monroe Street, Tallahassee, Florida 32399-1013. Each application for course provider registration must include application for approval of at least one course a completed application. Approval shall be granted upon verification that the provider possesses the following: five years experience in the construction, alteration, modification, maintenance or repair of elevators, and one of the following:

1. Possession of a Certificate of Competency issued by the bureau and in good standing;

2. Certification in good standing, pursuant to the American Society of Mechanical Engineers standards as a Qualified Elevator Inspector;

3. Proof of registration, licensure or certification in the elevator trade by a United States authority having jurisdiction, to standards substantially equal to or more stringent than those of Chapter 399, F.S.

(b) ~~A licensed, certified or registered contractor or engineer having five years experience in the elevator industry may, upon verification, be approved as a course provider.~~

~~(b)(e)~~ Each course provider approval and registration expires three years from the date of issue, and must be renewed prior to conducting any further courses intended to satisfy continuing education requirements of Chapter 399, F.S.

~~(d)~~ Each course provider seeking bureau approval must submit at least one continuing education course syllabus to the bureau for approval.

~~(c)(e)~~ A course provider must provide the bureau written notice of any material changes to information contained in its most recent application for, or renewal of, approval and registration no later than 30 days after such a change.

~~(d)(f)~~ The bureau shall maintain a list of all approved continuing education course providers ~~it has approved~~.

~~(e)~~ Course provider registration is subject to the provider's continued compliance with the bureau's minimum requirements set out in this rule. The bureau may conduct random audits of any registered provider to determine compliance and may audit any provider if it has reason to believe a provider is not in compliance with this section.

~~(f)(g)~~ The bureau shall deny approval of, suspend, or revoke the registration of any course provider ~~if~~ based on any of the following:

1. Obtaining or attempting to obtain registration or course approval through fraud, deceit, false statements, or misrepresentation of material facts, whether such statements or misrepresentations are made knowingly or negligently.

2. Failure to provide complete and accurate information in the initial application for registration or in any notification of change in information.

3. Failure to notify the bureau of a change in the information required in subsection (4) for registration of course providers.

4. Falsification of any records regarding the continuing education courses conducted by the course provider or the persons who attended the courses.

5. Failure to maintain any required records regarding the continuing education courses conducted by the course provider or the persons who attended the courses.

6. Failure to properly record attendance at any session of an approved course.

7. Failure to provide the bureau with copies of any document or other information required to be maintained by the course provider pursuant to this rule.

8. Advertising that a course is approved prior to the date approval is granted, or otherwise including false or misrepresentative information in advertising.

9. Participating in any activity designed or intended to circumvent or evade the requirements of Chapter 399, F.S., or the rules adopted by the bureau to implement that chapter.

10. Failure to include the ~~bureau~~ course identification number in any advertisement, brochure, course completion certificate, or other marketing or instructional material.

~~(g)(h)~~ If a course provider's registration is suspended or revoked, the course provider must cancel all sessions scheduled after the suspension or revocation takes effect and refund any fees associated with those sessions until such time as the course provider is restored to good standing.

~~(i)~~ ~~The bureau may deny approval or renewal of, suspend, or revoke the registration of any course provider when any license prerequisite to approval and registration of the course provider becomes suspended or revoked by the bureau.~~

~~(h)(j)~~ A course provider whose approval and registration are delinquent, expired, suspended or revoked may not conduct courses. Any courses conducted while a provider is delinquent, expired, suspended or revoked, will not satisfy the continuing education requirements of Chapter 399, F.S.

(3) Continuing Education Course Approval.

~~(a)~~ ~~To satisfy continuing education requirements of Chapter 399, F.S., and this rule, each approved course provider must submit at least one continuing education course syllabus to the bureau for approval.~~ To be approved as a course of continuing education for purposes of Chapter 399, F.S., and this rule, the course must provide technical or safety relevance to elevator construction, alteration, modification, repair or maintenance.

(b) The following subjects are relevant and provided as a guide. Courses submitted for approval need not encompass all these nor be limited to only these: elevator general theory and principles; plan and specification reading and interpretation; electrical codes; wiring and protection; wiring methods and materials; special occupancies and situations; life safety and Americans with Disabilities Act; current adopted elevator safety codes; inspectors manuals and structural considerations; wheelchair or accessibility lifts; OSHA Safety standards; periodic safety tests; or use of specialized tools and equipment.

(c) Continuing education courses will only be considered for approval when a registered course provider submits DBPR Form HR 5023-017 APPLICATION FOR COURSE PROVIDER REGISTRATION AND COURSE APPROVAL ~~the appropriate application is submitted by an approved course provider~~ to the bureau. The application must include: total number of hours of the course; a syllabus that demonstrates topical relevance of the course and includes an accounting of time spent on each topic or subsection in increments of not less than a quarter hour; the name and qualifications of all instructors known at the time of the application; a sample roster; a sample of the certificate provided upon completion of the course; and the course identification number, if known. ~~If the course provider does not submit a unique course identification number with the application, (The bureau shall assign each approved course a unique identification number. The bureau may request additional information as necessary to consider the course for approval.~~

(d) Any course denied approval may be modified and resubmitted for approval.

(e) The bureau may not deny or withdraw approval for a course on the sole basis that another course provider conducts the same or similar course approved by the bureau.

(f) Course approval is subject to continued compliance with the bureau's minimum requirements set out in this rule. The bureau may deny or withdraw approval of a course when the course, course instructor, or course provider fails to meet the requirements of this rule.

(g) Continuing education courses may be conducted through interactive distance learning so long as the course has been approved by the bureau and complies with all requirements in this subsection.

1. For the purpose of this rule, "interactive distance learning" means the delivery of an approved course via the internet or other interactive electronic media. Such training must be interactive, providing for the exchange of information at regular intervals to promote student involvement, and must provide for the evaluation, monitoring, and verification of course content and completion. Interactive distance learning programs must require the student to complete and submit a statement at the end of the course that the student personally completed each module of instruction.

2. The course provider is responsible for verifying student identification upon each log-in and at regular intervals, and ensuring that one student registration cannot be used to complete the course more than one time. Student identification verification may be based upon information obtained at the time of registration.

3. Each course provider must notify the bureau in writing that it will provide the training program through interactive distance learning. Such notification must include the course provider name; the course identification number; the form of interactive electronic media utilized; the internet address for the course, if applicable; and the name and qualifications of the course instructor responsible for ensuring the course material remains relevant.

(h) The course provider must notify the bureau in writing of any material changes to the information required by this subsection within 30 days of such change.

(i) The bureau may conduct random reviews of any approved course, including interactive distance learning courses, to determine compliance and may audit any course if it has reason to believe the course is not in compliance with this rule.

(4) Course Instructor Qualifications.

(a) Course instructors must be affiliated with a registered ~~an approved~~ course provider and possess education and experience that qualifies the instructor to teach the course or parts of the course to which he or she is assigned. The course provider is responsible for verifying course instructors' qualifications. Course instructors must possess This education and experience must be verified by the course provider, and

~~consist of the following:~~ five years experience in the construction, alteration, modification, maintenance or repair of elevators, and one of the following:

1. Possession of a Certificate of Competency issued by and in good standing with the bureau;

2. Current certification under the American Society of Mechanical Engineers standards as a Qualified Elevator Inspector;

3. Proof of registration, licensure or certification in the elevator trade by a United States authority having jurisdiction, to standards substantially equal to or more stringent than those of Chapter 399, F.S.

~~(b) A licensed, certified or registered contractor or engineer having five years experience in the elevator industry verified by the course provider, and whose license, certification, or registration is in good standing, also verified by the course provider, may teach a course within the scope of his or her license, certification, or registration.~~

(5) Records Required of Course Providers.

(a) The course provider must maintain records for each session of courses it conducts for the purpose of satisfying continuing education requirements established in Chapter 399, F.S., and provide any of these required records upon request by the bureau. Such records must be maintained for three years, and contain the following:

1. The time, dates and address of each course session.

2. The name, address and qualifications of any instructor teaching any portion of a course session.

3. The syllabus of each course, which must be provided to each attendee.

4. The name, address and bureau certification or registration number and type of each person that completed a course session, regardless of whether a fee is charged.

5. The original sign-in sheet used on-site to record attendance for each course session, which must include: the time, date and address of the course session, the attendee's printed name, signature, and bureau certification or registration number and type, and number of course hours the attendee completed. The sign-in sheet must prominently bear the following statement above the attendees' information: "By affixing my name and/or signature and/or mark to this document, I attest and certify that I am correctly and accurately identified herein as the person attending this continuing education course session." The sign-in sheet must also bear the following statement: "I attest the information recorded herein is true and accurate" above the signature of the instructor and the printed names of the course provider and instructor.

(b) Upon completion of a course, each attendee shall receive from the course provider a certificate measuring 8 1/2 inches by 11 inches, displaying the following: the time ~~and~~ date ~~and address~~ of the course session; name of the course; number of course hours attended; the ~~course provider's~~ name

and provider number assigned by the bureau; the course instructor's name and signature of the course provider and instructor, and the unique bureau course identification number.

(6) Advertising Continuing Education Courses.

(a) A course provider may not advertise a course as approved by the bureau until such approval is granted.

(b) A course provider may not misrepresent or include false or misleading information regarding the contents, instructors or number of hours of any course approved under this rule.

(c) The course provider must include the bureau course identification number in any advertising used in connection with the course, and any other materials used in connection with the course including but not limited to the syllabus or other instructional materials.

(d) Use of the state seal, department logo, or any representation of division endorsement other than provider registration and course approval is prohibited.

Rulemaking Specific Authority 399.001, 399.01, 399.02, 399.049 FS. Law Implemented 399.01(17) FS. History--New 11-9-06, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Bill L. Veach, Director, Division of Hotels and Restaurants, Department of Business and Professional Regulation

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Charlie Liem, Secretary, Department of Business and Professional Regulation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 19, 2011

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 30, 2010

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Pari-Mutuel Wagering

RULE NO.: 61D-14.042
 RULE TITLE: Accounting and Occurrence Meter Specifications

PURPOSE AND EFFECT: The purpose and effect of the proposed rule will be to implement Florida Statutes pertaining to the regulation of slot machine operations at pari-mutuel racing facilities.

SUMMARY: The amendment to Rule 61D-14.042, F.A.C., revises subsection (1) by removing the requirement that the meters measuring total credits in and out of a slot machine be electro-mechanical only.

OTHER RULES INCORPORATING THIS RULE: Rules 61D-14.047, 61D-14.073, and 61D-14.081 incorporate Rule 61D-14.042.

EFFECT ON THOSE OTHER RULES: None

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will not have an adverse impact on small business, will not increase regulatory costs by \$200,000 in the aggregate within one year, and will not require legislative ratification. A SERC has not been prepared by the agency.

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.

RULEMAKING AUTHORITY: 551.103(1), 551.122 FS.

LAW IMPLEMENTED: 551.103(1)(c), (d), (e), (g) 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: June 9, 2011, 10:00 a.m. – 12:00 Noon

PLACE: Florida Department of Business and Professional Regulation, Northwood Centre, Board Room, 1940 N. Monroe Street, Tallahassee, Florida 32399

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: Mary Polombo at (850)413-0750. 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: Mary Polombo, Clerk, Division of Pari-Mutuel Wagering, 1940 North Monroe Street, Tallahassee, Florida 32399-1035

THE FULL TEXT OF THE PROPOSED RULE IS:

61D-14.042 Accounting and Occurrence Meter Specifications.

(1) There shall be a minimum of two (2) ~~electro-mechanical~~ meters contained in each slot machine. One ~~electro-mechanical~~ meter shall measure total credits into the slot machine. The other ~~electro-mechanical~~ meter shall measure total credits out of the slot machine.

(2) through (6) No change.

Rulemaking Authority 551.103(1), 551.122 FS. Law Implemented 551.103(1)(c), (d), (e), (g) FS. History--New 7-30-06, Amended 6-21-10, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Milton Champion, Director, Division of Pari-Mutuel Wagering

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Charlie Liem, Secretary, Department of Business and Professional Regulation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 18, 2011
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 4, 2011

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE NO.: 68A-25.042
 RULE TITLE: Regulations Governing Statewide Alligator Trapping, Permitting, Taking and Sale

PURPOSE AND EFFECT: The purpose of the proposed rule is to provide additional hours to take alligators during daylight. The effect will be to improve program participation and harvest success while minimizing potential conflicts between other users of the resource or users of alligator management units.

SUMMARY: Four additional hours of daylight alligator hunting will be provided by setting the legal hours to take alligators from 5:00 p.m. until 10:00 a.m. each day during the established alligator harvest season.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. An SERC has not been prepared by the agency.

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.

RULEMAKING AUTHORITY: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution; 379.2223, 375.313 FS.

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

DATES AND TIME: During the regular meeting of the Commission, June 8-9, 2011, 8:30 a.m. – 5:00 p.m., each day

PLACE: The Renaissance Resort at World Golf Village, 500 South Legacy Trail, St. Augustine, FL 32092-2719

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: The ADA Coordinator, at (850)488-6411. 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: Diane R. Eggeman, Director, Division of Hunting and Game Management, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-25.042 Regulations Governing Statewide Alligator Trapping, Permitting, Taking and Sale.

No person shall take non-hatchling alligators from the wild except as provided herein and under other applicable rules of the Commission.

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

(b) Alligators may be taken from 5 p.m. until 10 a.m. + 1 hour before sunset to 1 hour after sunrise each day during the harvest period specified in the harvest permit. Harvest periods shall be from 5 p.m. + 1 hour before sunset on September 12 until 10 a.m. through 1 hour after sunrise on November 1, and from either 5 p.m. + 1 hour before sunset on August 15 until 10 a.m. through 1 hour after sunrise on August 22, or 5 p.m. + 1 hour before sunset on August 22 until 10 a.m. through 1 hour after sunrise on August 29, or 5 p.m. + 1 hour before sunset on August 29 until 10 a.m. through 1 hour after sunrise on September 5, or 5 p.m. + 1 hour before sunset on September 5 until 10 a.m. through 1 hour after sunrise on September 12, except as otherwise provided in the harvest permit.

(3)(c) through (5) No change.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const., 379.3012, 379.3751 FS. History–New 5-5-88, Amended 2-14-89, 4-11-90, 4-14-92, 4-29-93, 7-1-94, 3-30-95, 4-1-96, 9-15-96, 4-12-98, Formerly 39-25.042, Amended 4-30-00, 5-13-02, 4-11-04, 3-30-06, 3-19-08, 3-12-09, 7-20-09, _____.

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE F.A.W.

NAME OF PERSON ORIGINATING PROPOSED RULE: Diane R. Eggeman, Director, Division of Hunting and Game Management, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 24, 2011

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 23, 2010

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE NOS.:	RULE TITLES:
68B-13.001	Applicability of Rules to State and Federal Waters
68B-13.010	Stone Crab Trap Limitation Program
68B-13.011	Prohibitions

PURPOSE AND EFFECT: The purpose of these rule amendments is to allow the state of Florida to assume management of stone crab in adjacent federal waters as the Gulf of Mexico Fishery Management Council is in the process of repealing its federal Fishery Management Plan. The South Atlantic Fishery Management Council has no plan for stone crab in Atlantic federal waters. Current state regulations would be extended into federal waters.

SUMMARY: Rules 68B-13.001, F.A.C., (Applicability of rules to state and federal waters) would be a newly created section that would state that the regulations in this rule apply in all state waters, and that in the absence of any stone crab regulations in federal waters, the regulations would also apply in adjacent federal Exclusive Economic Zone (EEZ) waters. 68B-13.010 (Stone Crab Trap Limitation Program) and 68B-13.011 (Prohibitions), F.A.C., would both be amended to remove references to federal forms that will no longer be necessary.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. An SERC has not been prepared by the agency.

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.

RULEMAKING AUTHORITY: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

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

DATES AND TIME: During the Commission’s regular meeting June 8-9, 2011, 8:30 a.m. – 5:00 p.m., each day

PLACE: The Renaissance Resort at World Golf Village, 500 South Legacy Trail, St. Augustine, FL 32092-2719

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: The ADA Coordinator, at (850)488-6411. 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: Mark Robson, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, (850)487-0554

THE FULL TEXT OF THE PROPOSED RULES IS:

68B-13.001 Applicability of Rules to State and Federal Waters.

The regulations in this rule apply in all state waters and, in absence of any stone crab regulations in federal waters, apply in adjacent federal Exclusive Economic Zone (EEZ) waters.

PROPOSED EFFECTIVE DATE: July 1, 2011

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const., Art. X, Sec. 16, Fla. Const., 379.407 FS, History–New 7-1-11.

68B-13.010 Stone Crab Trap Limitation Program.

(1) No change.

(2) **CERTIFICATES AND TRAP TAGS.** Each holder of a stone crab trap endorsement must have a certificate on record for each stone crab trap used or possessed in or on the water. In addition, attached to each trap shall be a tag, issued annually by the Commission, which corresponds to a valid certificate.

(a) through (b) No change.

(c) Lost or damaged tags may be replaced using Commission Form DMF-SL3010 (07-01) (Stone Crab Trap Tag Replacement Application ~~(with NOAA/National Marine Fisheries Service Report of Lost or Stolen Fish and Shellfish Traps Form)~~), herein incorporated by reference, and upon proper verification of loss as defined in paragraph (e) below, and payment of the replacement tag fee. Damaged tags must be returned to the Commission.

(d) No change.

~~(e) Notification of lost or damaged tags shall be a written report made to the Commission on the NOAA/National Marine Fisheries Service Report of Lost or Stolen Fish and Shellfish Traps Form, which may be obtained from the local Division of Law Enforcement offices. The report shall include the certificate holder’s name, license number, endorsement number, and tag numbers lost, location or area tags lost in, and circumstances of the loss.~~

(3) through (7) No change.

PROPOSED EFFECTIVE DATE: July 1, 2011

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art IV, Sec. 9, Fla. Const. History–New 7-1-00, Amended 7-22-01, 6-2-02, 7-1-03, 7-15-04, 7-13-08, 7-1-11.

68B-13.011 Prohibitions.

(1) through (10) No change.

(11) It is unlawful for a person to possess or use a stone crab trap in or on state waters or adjacent federal waters without having firmly affixed thereto the trap tag required by this rule. ~~A federal stone crab trap tag issued by the National Marine Fisheries Service meets the tagging requirements of this rule only for traps fished in the federal waters of the Gulf of Mexico or in transit to the federal waters.~~

PROPOSED EFFECTIVE DATE: July 1, 2011

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art IV, Sec. 9, Fla. Const. History–New 7-1-00, Amended 7-22-01, 7-1-11.

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE F.A.W.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mark Robson, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, (850)487-0554

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 6, 2011

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 29, 2011

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE NOS.:	RULE TITLES:
68B-35.002	Definitions
68B-35.003	Size Limits; Prohibition of Sale; Landing in Whole Condition
68B-35.0035	Bag Limits
68B-35.004	Gear Specifications and Prohibited Gear
68B-35.005	Pompano Endorsement Regulations
68B-35.006	Closed Season

PURPOSE AND EFFECT: The purpose of these rule amendments is to extend Florida’s current regulations with some changes for permit, Florida Pompano, and African pompano into federal waters, where they are currently unregulated. The rule amendments would also separate the management strategies for permit and pompano resulting in new size and bag limits for each species. The rule amendments would reduce the commercial permit fishery. In addition,

Florida would be split into two management areas for permit, with more restrictive regulations in the southern management zone, including a closed season.

SUMMARY: Rule 68B-35.002 (Definitions), F.A.C., would be amended by adding definitions for “Harvest for commercial purposes,” “Person,” “Recreational harvester,” “Snagging” or “Snatch hooking,” “Spearing,” and “Special Permit Zone” (SPZ).

68B-35.003 (Size Limits; Prohibition of Sale; Landing in Whole Condition), F.A.C., would be amended to extend current size regulations for commercial harvesters of permit and Florida pompano and for recreational and commercial harvesters of African pompano into adjacent federal waters. It would also prohibit the possession of any permit or Florida pompano with a fork length greater than 20 inches on commercial vessels in all waters. The proposed final rule would establish a minimum size of 22 inches for recreationally harvested permit inside the SPZ, and a slot size of 11-22 inches for recreationally harvested permit in all waters outside the SPZ. The proposed final rule would replace the recreational slot of 11-20 inches for Florida pompano with a minimum size limit of 11 inches. Bag limit language would be moved to another section of the rule.

Rule 68B-35.0035 (Bag Limits), F.A.C., would be a new section which would include the bag limits for permit, Florida pompano, and African pompano. The proposed final rule would maintain a recreational bag limit of six Florida pompano per person for all waters. This bag limit would no longer include permit. The proposed final rule would extend the current commercial bag limit of 250 Florida pompano to federal waters. It would also establish a recreational bag limit of one permit per person, with a vessel maximum of two permit, inside the SPZ, as well as prohibit captain and crew of for-hire vessels from keeping permit. Outside the SPZ, the recreational bag limit for permit would be two per person, including one allowed over 22 inches, and a vessel limit of two permit over 22 inches. Inside the SPZ, commercial harvest of permit would be prohibited; however, an exception would exist to allow Pompano Endorsement holders fishing in the Pompano Endorsement Zone (PEZ) under the regulations of their Pompano Endorsement to harvest 100 permit as incidental bycatch where the SPZ and the PEZ overlap. Outside the SPZ, the proposed rule would prohibit all directed commercial harvest of permit in all waters, but establish an incidental bycatch allowance of 100 permit for commercial harvesters legally targeting other species with gill nets in federal waters only. The proposed final rule would also extend the two fish bag limit for African pompano for all harvesters into federal waters.

Rule 68B-35.004 (Gear Specifications and Prohibited Gear), F.A.C., would extend the current allowable recreational and commercial gears for Florida pompano into federal waters. The allowable gear for recreational permit harvest in all state

waters would continue to be hook and line only. The allowable gears for recreational permit harvesting in all federal waters would be hook and line and spearing. For the commercial incidental bycatch of permit in federal waters, the allowable gear would be gill and entangling nets. For African pompano, hook and line would continue to be the only allowable gear in state waters, but spearing would also be allowed for recreational and commercial harvest in federal waters. The pompano endorsement zone boundaries and gear language would be moved to another section of the rule.

Rule 68B-35.005 (Pompano Endorsement Regulations), F.A.C., would add Florida pompano endorsement gear language and zone boundaries to this part of the rule, clarify the language on zone boundaries and landing requirements, and rename this section of the rule. The pompano commercial bag limit language in this section would be moved into a newly created section of the rule.

Rule 68B-35.006 (Closed Season), F.A.C., would establish a closed season for permit harvest inside the SPZ during the months of May, June and July.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. An SERC has been prepared by the agency.

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.

RULEMAKING AUTHORITY: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

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

DATES AND TIME: During the Commission's regular meeting June 8-9, 2011, 8:30 a.m. – 5:00 p.m., each day

PLACE: The Renaissance Resort at World Golf Village, 500 South Legacy Trail, St. Augustine, FL 32092-2719

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: The ADA Coordinator, at (850)488-6411. 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: Mark Robson, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, (850)487-0554

THE FULL TEXT OF THE PROPOSED RULES IS:

68B-35.002 Definitions.

(1) through (4) No change.

(5) "Harvest for commercial purposes" means the taking or harvesting of fish for purposes of sale, barter, trade, or exchange, or with intent to sell, barter, trade, or exchange, or in excess of established bag limit.

(6)(5) "Land₂"; when used in connection with the harvest of a fish, means the physical act of bringing the harvested fish ashore.

(7) "Permit" means any fish of the species Trachinotus falcatus, or any part thereof.

(8) "Person" means any natural person, firm, entity or corporation.

(9)(6) "Pompano" means any fish of the species Trachinotus carolinus, or any part thereof.

(10) "Recreational harvester" means any person, other than a person harvesting for commercial purposes, who harvests fish within or without state waters.

(11) "Snagging" or "snatch hooking" means the intentional catching of a fish by any device intended to impale or hook the fish in any part of its body other than the mouth.

(12) "Spearing" means the catching or taking of a fish by bow hunting, gigging, spearfishing, or by any device used to capture a fish by piercing the body. Spearing does not include the catching or taking of a fish by a hook with hook and line gear or by snagging (snatch hooking).

(13) "Special Permit Zone" means state and adjacent federal Exclusive Economic Zone (EEZ) waters lying south of a line running due east from Cape Florida at 25°40' North Latitude, waters of Biscayne Bay south of Rickenbacker Causeway, and state and adjacent federal EEZ waters lying south of a line just south of Cape Romano at 25°50' North Latitude running due west through federal waters and running east to the mainland.

PROPOSED EFFECTIVE DATE: July 1, 2011

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New 7-1-89, Amended 1-1-96, Formerly 46-35.002, Amended 1-1-04, 7-1-11.

68B-35.003 Size and Bag Limits; Prohibition of Sale; Landing in Whole Condition.

(1) Permit Size Limits –

(a) Recreational Size Limits

1. Within the Special Permit Zone, no person shall harvest, possess, or land within or without state waters, any permit with a fork length less than 22 inches, except as provided in paragraph 68B-35.0035(1)(d), F.A.C.

2. Outside of the Special Permit Zone, no person shall harvest, possess, or land within or without state waters any permit with a fork length less than 11 inches or greater than 22

inches, except as provided in paragraph (b), or except that no person shall harvest, possess, or land more than one permit with a fork length greater than 22 inches as provided in subparagraph 68B-35.0035(1)(a)2., F.A.C. No person shall harvest in or from state waters, or possess while in or on state waters, any pompano or permit, with a fork length less than 11 inches, or greater than 20 inches, except that a person harvesting pursuant to the bag limit specified in paragraph (2)(a) of this rule may harvest and possess one pompano or permit greater than 20 inches in fork length. However, the possession of more than two (2) permit or pompano in any combination greater than 20 inches fork length on any vessel is prohibited. No person shall purchase, sell, or exchange any pompano or permit with a fork length less than 11 inches, or greater than 20 inches.

(b) Commercial Size Limits – A person harvesting for commercial purposes shall not harvest, possess, or land within or without state waters any permit with a fork length less than 11 inches or greater than 20 inches. No person may buy, sell, or exchange any permit with a fork length less than 11 inches or greater than 20 inches. The possession of any permit with a fork length less than 11 inches or greater than 20 inches on a vessel that is harvesting for commercial purposes is prohibited.

(2) Pompano Size Limits –

(a) Recreational Size Limits – No person shall harvest or possess within or without state waters any pompano with a fork length of less than 11 inches.

(b) Commercial Size Limits – A person harvesting for commercial purposes shall not harvest, possess, or land within or without state waters any pompano with a fork length less than 11 inches or greater than 20 inches. No person may buy, sell, or exchange any pompano with a fork length less than 11 inches or greater than 20 inches. The possession of any pompano with a fork length less than 11 inches or greater than 20 inches on a vessel that is harvesting for commercial purposes is prohibited.

(3)(b) African Pompano Size Limits – No person shall harvest in or from state waters, or possess within or without while in or on state waters, any African pompano with a fork length less than 24 inches, whether harvesting recreationally or for commercial purposes.

(4)(e) Landing in whole condition – All pompano, African pompano, and permit shall be landed in whole condition. The possession, within or without while in or on state waters, on any public or private fishing pier, or on a bridge or catwalk attached to a bridge from which fishing is allowed, or on any jetty, of any such fish that have been deheaded, sliced, divided, filleted, ground, skinned, scaled, or deboned is prohibited. Mere evisceration or “gutting” of such fish, or mere removal of gills, before landing is not prohibited.

(2) Bag Limits—

(a) Except for persons harvesting pompano commercially pursuant to the limits established by Rule 68B-35.005, F.A.C., or permit pursuant to a valid saltwater products license with a restricted species endorsement, no person shall harvest in or from state waters more than a total of 6 pompano or permit per day, in any combination of species, nor possess while in or on state waters more than 6 such fish. No more than one (1) of such pompano or permit may exceed 20 inches fork length. No more than two (2) permit or pompano in any combination exceeding 20 inches fork length shall be possessed onboard any vessel at any time.

(b) Each harvester of African pompano is subject to a bag limit of 2 African pompano per day; however, no more than 2 African pompano shall be possessed aboard any vessel while in or on state waters at any time.

PROPOSED EFFECTIVE DATE: July 1, 2011

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 7-1-89, Amended 1-1-96, Formerly 46-35.003, Amended 11-1-01, 1-1-04, 3-1-05, 7-1-11.

68B-35.0035 Bag Limits.

(1) Permit Bag Limits –

(a) Recreational Bag Limit

1. Within the Special Permit Zone, no person shall recreationally harvest or possess at any time within or without state waters or on any dock, pier, bridge, beach, or other fishing site adjacent to such waters more than one (1) permit per person per day, provided that no more than two (2) permit shall be possessed aboard any vessel at any time. The possession of any permit on a vessel that is harvesting for commercial purposes within the Special Permit Zone is prohibited, except as provided in subparagraph 68B-35.0035(1)(b)2., F.A.C. On any vessel licensed to carry customers wherein a fee is paid, either directly or indirectly, for the purpose of taking or attempting to take marine fish within or without state waters, the applicable bag and possession limit specified in this rule shall not extend to the operator of such vessel or any person employed as a crew person of such vessel.

2. Outside of the Special Permit Zone, and except as provided in subparagraph 68B-35.0035(1)(b)2., F.A.C., no person shall recreationally harvest or possess at any time within or without state waters or on any dock, pier, bridge, beach, or other fishing site adjacent to such waters more than two (2) permit per day. A recreational harvester may harvest, possess, or land within or without state waters no more than one permit with a fork length greater than 22 inches, included in the bag limit established in this subsection. No more than two permit with a fork length greater than 22 inches may be possessed aboard a vessel at any time. On any vessel licensed to carry customers wherein a fee is paid, either directly or indirectly, for the purpose of taking or attempting to take marine fish within or without state waters, the applicable bag

and possession limit specified in this rule shall not extend to the operator of such vessel or any person employed as a crew person of such vessel.

(b) Commercial Bag Limit

1. No directed commercial harvest of permit – Possession of any permit aboard a vessel harvesting for commercial purposes is prohibited, except for persons harvesting for commercial purposes pursuant to paragraph 68B-35.004(5)(a), F.A.C.

2. Persons harvesting permit as incidental bycatch pursuant to paragraph 68B-35.004(5)(a), F.A.C., shall be subject to a daily harvest, landing, and possession limit of 100 permit. Possession of commercial incidental bycatch quantities of permit is prohibited within the Special Permit Zone, except for Pompano Endorsement holders within the Pompano Endorsement Zone harvesting pursuant to Rule 68B-35.005, F.A.C.

(2) Pompano Bag Limits –

(a) Recreational Bag Limit – Except as provided in paragraph 68B-35.0035(2)(b), F.A.C., no person shall recreationally harvest or possess at any time within or without state waters more than six (6) pompano per day.

(b) Pompano Commercial Daily Harvest Limits –

1. Persons harvesting for commercial purposes, except for Pompano Endorsement holders harvesting within the Pompano Endorsement Zone pursuant to Rule 68B-35.005, F.A.C., are subject to a daily harvest, landing, and possession limit of 250 pompano within or without state waters.

2. Persons harvesting pompano as incidental bycatch pursuant to paragraph 68B-35.004(5)(a), F.A.C., shall be subject to a daily harvest, landing, and possession limit of 100 pompano.

(3) African Pompano Bag Limits – Each person harvesting African pompano within or without state waters is subject to a bag limit of two (2) African pompano per day, whether harvesting recreationally or for commercial purposes. No more than two (2) African pompano shall be possessed aboard any vessel within or without state waters at any time.

PROPOSED EFFECTIVE DATE: July 1, 2011

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const., Art. X, Sec. 16, Fla. Const., 379.407 FS, History–New 7-1-11.

68B-35.004 Gear Specifications and Prohibited Gear.

(1) The harvest of pompano, African pompano, or permit within or without in or from state waters by or with the use of any multiple hook in conjunction with live or dead natural bait, or the landing of such fish so harvested, is prohibited. Snagging (snatch hooking) of pompano, African pompano, or permit within or without in or on state waters is also prohibited.

~~(2)(a) African Pompano Gear – Except as provided in paragraph (b),~~ The harvest or attempted harvest of any African pompano in or from state waters whether harvesting recreationally or for commercial purposes, by or with the use of any gear other than a hook and line gear is prohibited. In adjacent federal EEZ waters, the harvest or attempted harvest of any African pompano by or with the use of any gear other than hook and line gear or spearing is prohibited, whether harvesting recreationally or for commercial purposes.

(3) Permit Gear – Except as provided in paragraph 68B-35.004(5)(a), F.A.C., the harvest or attempted harvest of any permit in or from state waters by or with the use of any gear other than hook and line gear is prohibited. The harvest or attempted harvest of any permit in adjacent federal EEZ waters by or with the use of any gear other than hook and line and spearing gear is prohibited.

~~(4)(b) Pompano Gear – Except as provided in subsection 68B-35.005(3), F.A.C., or as provided in paragraph 68B-35.004(5)(a), F.A.C.,~~ the harvest or attempted harvest of any pompano within or without in state waters by or with the use of any gear other than a beach or haul seine, a cast net, or hook and line gear is prohibited.

~~(5)(3)~~ Except as provided in paragraph 68B-35.005(2)(d), F.A.C., and in this paragraph, no person shall simultaneously possess aboard any vessel in state waters any pompano or permit together with any gill or entangling net.

~~(a) Such possession is allowed by persons who have harvested pompano in adjacent federal Exclusive Economic Zone (EEZ) waters and who possess a valid saltwater products license with a restricted species endorsement and a pompano endorsement issued pursuant to subsection 68B 35.005(1), F.A.C., only in the area of state waters between 25°09' North Latitude and 26°00' North Latitude, between Cape Sable and Hurricane Pass.~~

~~(4) Each pompano gill or entangling net possessed in state waters or used in federal EEZ waters pursuant to subsection (3) shall meet the following specifications, except that the mesh size requirement in paragraph (c) shall not apply to the exception in paragraph (3)(b):~~

~~(a)(b) Possession of pompano or permit is allowed by persons who have harvested pompano or permit in adjacent federal EEZ waters as an incidental bycatch in gill or entangling nets while fished for other species, as long as such which persons possess a valid saltwater products license with a restricted species endorsement, and provided that the amount of pompano or permit does not exceed the harvest, possession, and landing limit specified in subparagraphs 68B-35.0035(2)(b)2. and 68B-35.0035(1)(b)2. 005(2)(e), F.A.C.~~

~~(c) Paragraphs (a) and (b) shall not apply to any person or vessel returning from federal EEZ waters that stops to fish in state waters.~~

~~(a) Such net shall not be less than 400 yards in length, along the cork line and along the lead line.~~

~~(b) Such net shall be at least 70 meshes deep at its shallowest point.~~

~~(c) Such net shall have a mesh size of at least 4 1/2 inches stretched mesh, throughout the net.~~

PROPOSED EFFECTIVE DATE: July 1, 2011

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const., Art. X, Sec. 16, Fla. Const., 379.40 FS. History—New 7-1-89, Amended 1-1-96, Formerly 46-35.004, Amended 11-1-01, 1-1-04, 7-1-11.

~~68B-35.005 Commercial Pompano Harvest Requirements: Pompano Endorsement Regulations Criteria; State and Federal Waters Pompano Daily Harvest Limits and License Requirements for Sale or Purchase.~~

~~(1) No change.~~

~~(2) STATE AND FEDERAL WATERS DAILY COMMERCIAL HARVEST LIMITS—Persons harvesting pompano in state and federal waters pursuant to a saltwater products license with a restricted species endorsement, but who do not possess a pompano endorsement, shall be subject to a daily harvest and landing limit of 250 individual pompano; provided, however, that no more than 250 pompano harvested pursuant to this subsection shall be possessed aboard any vessel at any time. Such persons are subject to the gear limitations of paragraph 68B-35.004(2)(b), F.A.C.~~

~~(a) No person shall sell more than 250 individual pompano per day, unless such person possesses a valid Pompano Endorsement, in addition to a saltwater products license with a restricted species endorsement. Pompano shall only be harvested with a gill or entangling net in federal EEZ waters specified in paragraph 68B-35.004(3)(a), F.A.C., and shall only be sold by a person harvesting such pompano pursuant to a Pompano Endorsement.~~

~~(b) No wholesale dealer shall purchase more than 250 individual pompano per day from any person who does not possess and present to the dealer a valid Pompano Endorsement, in addition to a saltwater products license with a restricted species endorsement.~~

~~(c) Persons harvesting pompano as incidental bycatch pursuant to paragraph 68B-35.004(3)(b), F.A.C., shall be subject to a daily harvest, landing, and possession limit of 100 pompano.~~

~~(2) Pompano Endorsement Zone~~

~~(a) Boundaries – Regulations for Pompano Endorsement Holders established in Rule 68B-35.005, F.A.C., apply only in federal EEZ waters between 25°09' North Latitude and 26°00' North Latitude, between Cape Sable and Hurricane Pass.~~

(b) Transport and Landings – Transport through state waters of pompano harvested pursuant to paragraph 68B-35.005(2)(a), F.A.C., must be between 25°09' North Latitude and 26°00' North Latitude, between Cape Sable and Hurricane Pass, and landed within these boundaries.

(c) Sale – At the initial sale, no wholesale dealer shall purchase more than 250 individual pompano per day from any person who does not possess and present to the dealer a valid Pompano Endorsement, in addition to a saltwater products license with a restricted species endorsement. No person harvesting for commercial purposes pursuant to a valid Pompano Endorsement, in addition to a saltwater products license with a restricted species endorsement shall sell more than 250 individual pompano.

(d) Simultaneous Possession of Pompano and Gill or Entangling Nets – Simultaneous possession of any pompano together with any gill or entangling net aboard any vessel is only allowed within or without state waters, between 25°09' North Latitude and 26°00' North Latitude, between Cape Sable and Hurricane Pass, by persons who have harvested pompano within the boundaries established in paragraph 68B-35.005(2)(a), F.A.C., and who possess a valid saltwater products license with a restricted species endorsement and a Pompano Endorsement issued pursuant to subsection 68B-35.005(1), F.A.C., or pursuant to paragraph 68B-35.004(5)(a), F.A.C.

(e) The exemption established in paragraph 68B-35.005(2)(d), F.A.C., shall not apply to any person or vessel which does not return from federal EEZ waters directly, continuously, and expeditiously from the place where the lawful harvest occurred to the place where the vessel is regularly docked, moored, or otherwise stored or to the place of the licensed wholesale dealer where the catch is to be sold, or otherwise fails to meet all requirements of Section 379.2423, F.S.

(3) GEAR FOR POMPANO ENDORSEMENT ZONE – Persons harvesting pursuant to a Pompano Endorsement and within the Pompano Endorsement Zone established in paragraph 68B-35.005(2)(a), F.A.C., are permitted to use gill or entangling nets to target pompano in addition to allowable gears for pompano listed in Rule 68B-35.004, F.A.C. Each gill or entangling net shall meet the following specifications:

(a) Such net shall not be less than 400 yards in length, along the cork line and along the lead line.

(b) Such net shall be at least 70 meshes deep at its shallowest point.

(c) Such net shall have a mesh size of at least 4 1/2 inches stretched mesh, throughout the net.

PROPOSED EFFECTIVE DATE: July 1, 2011

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const., Art. X, Sec. 16, Fla. Const., 379.407 FS. History—New 11-1-01, Amended 1-1-04, 7-1-11.

68B-35.006 Closed Season.

Inside the Special Permit Zone, no person shall harvest, possess, purchase, sell or exchange any permit within or without state waters during the months of May, June, and July of each year except as provided in paragraph 68B-35.0035(1)(d), F.A.C. During this closed season, the possession of permit while in or on the waters of the Special Permit Zone, including any dock, pier, bridge, beach, or other fishing site adjacent to such waters is prohibited.

PROPOSED EFFECTIVE DATE: July 1, 2011

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const., Art. X, Sec. 16, Fla. Const., 379.407 FS. History—New 7-1-11.

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE F.A.W.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mark Robson, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, (850)487-0554

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 6, 2011

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 29, 2011

FINANCIAL SERVICES COMMISSION

OIR – Insurance Regulation

RULE NO.: 69O-137.001
 RULE TITLE: Annual and Quarterly Reporting Requirements

PURPOSE AND EFFECT: This rule is being amended to adopt the 2010 NAIC Quarterly Statement Instructions and also adopts the 2011 NAIC accounting practices and procedures manual.

SUMMARY: Section 624.424, Florida Statutes, requires insurers to file quarterly and annual financial reports with the Office of Insurance Regulation and allows the Office to enact rules setting the standards for those reports. By adopting the current versions of these NAIC instructions and manuals, the Office is establishing up-to-date, uniform standards for annual and quarterly reports which will provide the information necessary for the Office to evaluate insurers' financial conditions.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. An SERC has not been prepared by the agency.

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.

RULEMAKING AUTHORITY: 624.308(1), 624.424(1) FS.

LAW IMPLEMENTED: 624.424(1) 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: June 14, 2011, 9:30 a.m.

PLACE: Room 142, Larson Building, 200 East Gaines Street, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Kerry Krantz, Bureau of Life and Health, Office of Insurance Regulation, E-mail kerry.krantz@flor.com. 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: Kerry Krantz, Bureau of Life and Health, Office of Insurance Regulation, E-mail kerry.krantz@flor.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69O-137.001 Annual and Quarterly Reporting Requirements.

(1) through (3) No change.

(4) Manuals Adopted.

(a) Annual statements shall be prepared in accordance with the following manuals, which are hereby adopted and incorporated by reference:

1. The NAIC's Annual Statement Instructions, Property and Casualty, 2010 ~~2009~~;

2. The NAIC's Annual Statement Instructions, Life, Accident and Health, 2010 ~~2009~~;

3. The NAIC's Annual Statement Instructions, Health, 2010 ~~2009~~;

4. The NAIC's Annual Statement Instructions, Title, 2010 ~~2009~~; and

5. The NAIC's Accounting Practices and Procedures Manual, as of March 2010 ~~2009~~.

(b) Quarterly statements shall be prepared in accordance with the following manuals, which are hereby adopted and incorporated by reference:

- 1. The NAIC's Quarterly Statement Instructions, Property and Casualty, 2011 2009;
- 2. The NAIC's Quarterly Statement Instructions, Life, Accident and Health, 2011 2009;
- 3. The NAIC's Quarterly Statement Instructions, Health, 2011 2009;
- 4. The NAIC's Quarterly Statement Instructions, Title, 2011 2009; and
- 5. The NAIC's Accounting Practices and Procedures Manual, as of March 2011 2009.

(c) Copies of the manuals are available:

- 1. From the National Association of Insurance Commissioners, 2301 McGee, Suite 800, Kansas City, MO 64108-2604, and
- 2. For inspection at the Office at its headquarters in Tallahassee, Florida, during regular business hours.

Rulemaking Authority 624.308(1), 624.424(1) FS. Law Implemented 624.424(1) FS. History--New 3-31-92, Amended 8-24-93, 4-9-95, 4-9-97, 4-4-99, 11-30-99, 2-11-01, 4-5-01, 12-4-01, 12-25-01, 8-18-02, 7-27-03, Formerly 4-137.001, Amended 1-6-05, 9-15-05, 1-25-07, 3-16-08, 3-4-09, 1-4-10,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kerry Krantz, Bureau of Life and Health, Office of Insurance Regulation, E-mail kerry.krantz@flor.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 9, 2011

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 12, 2010

FINANCIAL SERVICES COMMISSION

OIR – Insurance Regulation

RULE NO.: 69O-138.001
RULE TITLE: NAIC Financial Condition Examiners Handbook Adopted

PURPOSE AND EFFECT: This rule is being amended to adopt the 2011 NAIC Financial Condition Examiners Handbook. The current rule adopted the 2009 version.

SUMMARY: Section 624.316, Florida Statutes, requires the Office to examine insurer's financial condition, using generally accepted accounting procedures. This statute also allows the Office to adopt the NAIC Financial Condition Examiners Handbook to facilitate these exams. By adopting the newest version of the handbook, this rule ensures that the procedures used by the Office to examine insurers are the current generally accepted accounting practices.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. An SERC has not been prepared by the agency.

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.

RULEMAKING AUTHORITY: 624.308(1), 624.316(1)(c) FS. LAW IMPLEMENTED: 624.316(1)(c) 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: June 14, 2011, 9:30 a.m.
PLACE: Room 142, Larson Building, 200 East Gaines Street, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Kerry Krantz, Bureau of Life and Health, Office of Insurance Regulation, E-mail kerry.krantz@flor.com. 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: Kerry Krantz, Bureau of Life and Health, Office of Insurance Regulation, E-mail kerry.krantz@flor.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69O-138.001 NAIC Financial Condition Examiners Handbook Adopted.

(1)(a) The National Association of Insurance Commissioners Financial Condition Examiners Handbook 2010 (2006) is hereby adopted and incorporated by reference.

(b) The National Association of Insurance Commissioners Financial Condition Examiners Handbook 2011 2009 is hereby adopted and incorporated by reference.

(2) through (3) No change.

Rulemaking Authority 624.308(1), 624.316(1)(c) FS. Law Implemented 624.316(1)(c) FS. History--New 3-30-92, Amended 4-9-97, 4-4-99, 11-30-99, 2-11-01, 12-25-01, 8-18-02, 7-27-03, Formerly 4-138.001, Amended 1-6-05, 9-15-05, 1-25-07, 3-16-08, 3-4-09, 1-4-10,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kerry Krantz, Bureau of Life and Health, Office of Insurance Regulation, E-mail kerry.krantz@flor.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 9, 2011
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 12, 2010

Section III Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF HEALTH

Board of Medicine

RULE NO.: RULE TITLE:
 64B8-8.001 Disciplinary Guidelines
 NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 36, No. 50, December 17, 2010 issue of the Florida Administrative Weekly.

The changes are in response to written comments submitted by the staff of the Joint Administrative Procedures Committee (JAPC). The changes are as follows:

1. The penalty set forth in subparagraph (2)(ddd)2., shall read as follows: Revocation and a \$10,000.00 fine.
2. The penalty set forth in subparagraph (2)(eee) shall read as follows: Revocation and a \$10,000.00 fine.
3. The requirement for community service shall be deleted from all penalties in subparagraphs (2)(ggg), (iii), (jjj)2., (kkk), (lll), (mmm), and (nnn).
4. The following citations shall be deleted from the rulemaking authority: 456.0375(4)(c), 456.50(2), and 456.0575.
5. The following citation shall be deleted from the law implemented: 456.0375(4)(c).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joy A. Tootle, Executive Director, Board of Medicine, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253

DEPARTMENT OF HEALTH

Board of Medicine

RULE NO.: RULE TITLE:
 64B8-9.0131 Training Requirements for
 Physicians Practicing in Pain
 Management Clinics

NOTICE OF CORRECTION

Notice is hereby given that the above-referenced rule was filed for adoption with a correction to the title and with corrections to the paragraph formatting (numbering). The rule, which was

originally published in Vol. 37, No. 7, of the February 18, 2011, issue of the FAW, stated that this proposed rule would amend the previously adopted rule with the same rule number which is currently adopted, but awaiting ratification by the Legislature. At the time of adoption of the proposed rule amendment, the previously adopted new rule had not been ratified by the Legislature. As such, the proposed amendment adding paragraph (2)(n) to the rule, regarding training requirements for physicians practicing in pain management clinics, could not be incorporated into the non-ratified rule. Therefore, the rule is being filed for adoption utilizing the original rule number and making a correction to the title and the paragraph numbering.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joy A. Tootle, Executive Director, Board of Medicine, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253.

Section IV Emergency Rules

NONE

Section V Petitions and Dispositions Regarding Rule Variance or Waiver

AGENCY FOR HEALTH CARE ADMINISTRATION

NOTICE IS HEREBY GIVEN that on April 19, 2011, the Florida Agency for Health Care Administration, received a petition for Variance or Waiver of paragraph 59A-35.070(1)(c), Florida Administrative Code, from the following:

Colonial Care NH, L.L.C. d/b/a Lexington Health and Rehabilitation Center
 6300 46th Avenue North
 St. Petersburg, FL 33709

Jackson Heights, NH, L.L.C. d/b/a Unity Health and Rehabilitation Center
 1404 NW 22nd Street
 Miami, FL 33142

Lady Lake NH, L.L.C. d/b/a Lady Lake Speciality Care Center
 630 Griffin Avenue
 Lady Lake, FL 32159