

Notice of Proposed Rule

DEPARTMENT OF REVENUE

Miscellaneous Tax

RULE NO.: RULE TITLE:

12B-5.050: Terminal Suppliers

12B-5.060: Wholesalers

12B-5.080: Exporters

12B-5.140: Dyeing and Marking; Mixing

12B-5.150: Public Use Forms

12B-5.300: Aviation Fuel Licensees

12B-5.400: Producers and Importers of Pollutants

PURPOSE AND EFFECT: : Sections 14 and 16, Chapter 2020-10, L.O.F., increased the maximum bond amount required for each terminal supplier, exporter, producer/importer of pollutants, or wholesaler, except a municipality, county, school board, state agency, federal agency, or special district which is licensed under Part I of Chapter 206, F.S., from \$100,000 to \$300,000 effective July 1, 2020. Section 15, Chapter 2020-10, L.O.F., amended the penalty amount assessed against any person who fails to provide or post the required notice regarding dyed diesel fuel pursuant to s. 206.8741, F.S. The purpose of the proposed amendments is to update Rules 12B-5.050, 12B-5.060, 12B-5.080, 12B-5.140, 12B-5.150, and 12B-5.400 to reflect these statutory changes.

The purpose of additional proposed revisions to Rule 12B-5.150 incorporate changes to forms regarding notarization requirements.

The purpose of proposed revisions to Rule 12B-5.300, F.A.C., is to incorporate the 2018 reduction of aviation fuel tax from 6.9 cents per gallon to 4.27 cents per gallon, as well as the additional refund amount allowed for qualified air carriers.

SUMMARY: Rules 12B-5.050, 12B-5.060, 12B-5.080, and 12B-5.400, F.A.C., are amended to adjust the maximum bond amount in the rules to reflect the statutory changes in Sections 14 and 16, Chapter 2020-10, L.O.F.

Rule 12B-5.140, F.A.C., is amended to adjust the penalty amount for violations of the provisions for marking dyed diesel fuel to reflect the statutory change.

Rule 12B-5.150, F.A.C., is amended to include revisions to forms currently used to administer fuel taxes, including the increased bond amount, the removal of notarization statements, and the removal of the bond requirement for alternative fuel, which is no longer required.

Rule 12B-5.300, F.A.C., is amended to update the reduction of the aviation fuel tax, provide the calculation method for the additional refund amount for qualified air carriers, and remove the expired provisions regarding the sale of aviation fuel to certain commercial air carriers.

Proposed amendments also remove the option of visiting local service centers to obtain copies of Departmental forms. Forms are currently available on the Department's website and may also be obtained by calling or writing the Department.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

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. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: 1) no requirement for the Statement of Economic Regulatory Costs (SERC) was triggered under Section 120.541(1), F.S.; and 2) based on past experiences regarding rules of this nature, the adverse impact or regulatory cost, if any, do not exceed nor would exceed any one of the economic analysis criteria in a SERC, as set forth in Section 120.541(2)(a), F.S.

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\(1\)](#), [206.87\(1\)\(c\)2.](#), [206.8741\(1\)](#), [206.97](#), [213.06\(1\)](#), [213.755\(8\)](#), F.S.

LAW IMPLEMENTED: [119.071\(5\)](#), [206.01](#), [206.01\(4\)](#), [206.01\(21\)](#), [206.02](#), [206.021](#), [206.022](#), [206.025](#), [206.026](#), [206.027](#), [206.028](#), [206.03](#), [206.04](#), [206.05](#), [206.051](#), [206.052](#), [206.055](#), [206.06](#), [206.095](#), [206.11](#), [206.404](#), [206.41](#), [206.413](#), [206.414](#), [206.416](#), [206.43](#), [206.44](#), [206.48](#), [206.485](#), [206.62](#), [206.63](#), [206.86](#), [206.87](#), [206.872](#), [206.873](#), [206.874](#), [206.8741](#), [206.8745](#), [206.8745\(3\)](#), [206.90](#), [206.91](#), [206.92](#), [206.97](#), [206.9815](#), [206.9825](#), [206.9835](#),

[206.9865](#), [206.9875](#), [206.9915](#), [206.9925](#), [206.9931](#), [206.9935](#), [206.9941](#), [206.9942](#), [206.9943](#), [212.0501](#), [213.255](#), [213.37](#), [213.755](#), F.S.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Danielle Boudreaux, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-7082, email RuleComments@floridarevenue.com.

THE FULL TEXT OF THE PROPOSED RULE IS:

12B-5.050 Terminal Suppliers.

- (1) No change
- (2) Licensing and Bonding.
 - (a) No change
 - (b) Bonding.

1. Prior to becoming licensed, each new terminal supplier applicant must submit, to the Department, a bond which equals 3 times the estimated average monthly fuel tax levied under Chapter 206, F.S., for each type of fuel that will be sold, but such bond will not exceed a maximum of \$300,000 ~~\$100,000~~ for each product type (motor fuel, diesel, and aviation fuel).

2. A terminal supplier that has filed bonds of less than \$300,000 ~~\$100,000~~ for each product type (motor fuel, diesel, and aviation fuel) will be notified by the Department when its liability increases to an amount that requires an increase in its bond.

- (3) through (6) No change

PROPOSED EFFECTIVE DATE: JANUARY 1, 2021.

Rulemaking Authority 206.14(1), 206.485(1), 206.59(1), 206.87(1)(e)2., 213.06(1), 213.755(8) FS. Law Implemented 206.01, 206.02, 206.05, 206.41, 206.413, 206.414, 206.43, 206.48, 206.485, 206.62, 206.63, 206.86, 206.87, 206.872, 206.873, 206.874, 206.8745, 206.90, 206.91, 206.97, 206.9815, 206.9941, 206.9942, 213.755 FS. History—New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06, 6-1-09, 1-25-12, 7-28-15, 1-17-18, 3-25-20, 1-1-21.

12B-5.060 Wholesalers.

- (1) No change
- (2) Licensing and Bonding.
 - (a) No change

(b)1. Each wholesaler that is licensed pursuant to Section 206.02, F.S., will be required to furnish a bond to the Department in a sum of not more than \$300,000 ~~\$100,000~~, for each product type (motor fuel, diesel fuel, and aviation fuel).

- 2. through 9. No change

(c) A person who is licensed as a wholesaler and an importer will file bonds as follows:

- 1. through 3. No change

4. If the wholesaler bond is less than \$300,000 ~~\$100,000~~, an additional bond for motor fuel will be calculated and added to the wholesale bond based on the estimated average monthly gallons to be imported, multiplied by the maximum Local Option Fuel Tax rate, charged in this State, multiplied by three.

- (3) through (6) No change

PROPOSED EFFECTIVE DATE: JANUARY 1, 2021.

Rulemaking Authority 206.14(1), 206.485(1), 206.59(1), 206.97, 213.06(1), 213.755(8) FS. Law Implemented 206.01(4), 206.02, 206.05, 206.404, 206.43, 206.48, 206.485, 206.86, 206.90, 206.91, 206.9825, 213.755 FS. History—New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06, 6-1-09, 1-25-12, 1-20-14, 7-28-15, 1-17-18, 1-1-21.

12B-5.080 Exporters.

- (1) No change
- (2) Licensing and Bonding.
 - (a) through (b) No change
 - (c) Bonding.

1. An exporter's bond will be equal to three times the total state and local option taxes that would be due if the fuel was sold for highway use in Florida.

2. An exporter, who is also bonded as a wholesaler, will obtain a bond which will be the difference between the

wholesaler bond and the ~~\$300,000~~ \$100,000 maximum bond for motor fuel, diesel fuel, and aviation fuel.

(3) through (6) No change

PROPOSED EFFECTIVE DATE: JANUARY 1, 2021.

Rulemaking Authority 206.14(1), 206.485(1), 206.59(1), 206.87(1)(e)2., 213.06(1), 213.755(8) FS. Law Implemented 206.01(21), 206.02, 206.03, 206.04, 206.05, 206.051, 206.052, 206.41, 206.416, 206.43, 206.48, 206.485, 206.62, 206.87, 206.90, 206.91, 206.97, 206.9915, 213.755 FS. History—New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06, 6-1-09, 1-25-12, 1-20-14, 7-28-15, 1-17-18, 1-1-21.

12B-5.140 Dyeing and Marking; Mixing.

(1) Marking and Dyeing.

(a) The dyeing and marking of diesel fuel will follow the requirements of 48.4082-1, Treasury Regulations (February 26, 2002, hereby incorporated by reference in this rule), and shall conform to the Environmental Protection Agency’s high sulfur diesel fuel requirements as found in 40 C.F.R. Chapter 1, s. 80.29 (January 18, 2001, hereby incorporated by reference in this rule).

(b) Persons found in violation of the marking requirements will be subject to a penalty of \$2,500 for each month such failure occurs, pursuant to Section 206.8741(6).

(c) Persons found in violation of the dyeing provisions will be subject to the penalty imposed under Section 206.872(11), F.S.

(2) Mixing.

(a) through (b) No change

(c)1. The discovery by the Department of dye in any fuel storage facility that is not properly marked for off highway or other exempt use as dyed fuel will be prima facie evidence of a violation of Section 206.8741, F.S., and subject to the penalty imposed under Section ~~206.8741(6)~~ ~~206.872(11)~~, F.S.

2. Unless the misfueling incident has been previously reported, persons found in violation of the marking provisions will be subject to a penalty of ~~\$2,500 per month such failure occurs~~ the greater of \$10 for each gallon of diesel fuel involved or \$1,000, and no refund of tax paid on the diesel fuel will be granted.

PROPOSED EFFECTIVE DATE: JANUARY 1, 2021.

Rulemaking Authority 206.14(1), 206.59(1), 206.8741(1), 213.06(1) FS. Law Implemented 206.8741, 206.8745(3) FS. History—New 7-1-96, Amended 11-21-96, 5-1-06, 1-20-14, 1-1-21.

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) Copies of these forms are available, without cost, by one or more of the following methods: 1) downloading the form from the Department’s website at ~~www.floridarevenue.com~~; or, 2) calling the Department at (850)488-6800, Monday through Friday (excluding holidays) ; or, 3) ~~visiting any local Department of Revenue Service Center; or, 4)~~ writing the Florida Department of Revenue, Taxpayer Services, Mail Stop 3-2000, 5050 West Tennessee Street, Tallahassee, Florida 32399-0112. Persons with hearing or speech impairments may call the Florida Relay Service at 1(800)955-8770 (Voice) and 1(800)955-8771 (TTY).

Form Number	Title	Effective Date
(2)	No change	
(3) DR-156	Florida Fuel or Pollutants Tax Application (http://www.flrules.org/Gateway/reference.asp?No=Ref-11386)	01/21 01/20
(4) DR-156R	Renewal Application for Florida Fuel/Pollutants License (R-01/18) (http://www.flrules.org/Gateway/reference.asp?No=Ref-08975)	01/21 01/18
(5) DR-156T	Florida Temporary Fuel Tax Application (http://www.flrules.org/Gateway/reference.asp?No=Ref-10799)	01/21 07/19
(6) DR-157	Fuel or Pollutants Tax Surety Bond (R-10/13) (http://www.flrules.org/Gateway/reference.asp?No=Ref-03580)	01/21 01/14
(7) DR-157A	Assignment of Time Deposit (R-09/11) (http://www.flrules.org/Gateway/reference.asp?No=Ref-00854)	01/21 01/12
(8) DR-157B	Fuel or Pollutants Tax Cash Bond (R-10/13) (http://www.flrules.org/Gateway/reference.asp?No=Ref-03581)	01/21 01/14
(9) DR-157W	Bond Worksheet Instructions (http://www.flrules.org/Gateway/reference.asp?No=Ref-11387)	07/20 01/20

(10)	No change	
(11) DR-176	Application for Air Carrier Fuel Tax License (R-01/18) (http://www.flrules.org/Gateway/reference.asp?No=Ref-08977)	<u>01/21</u> 01/18
(12) through (37)	No change	

PROPOSED EFFECTIVE DATE: JANUARY 1, 2021.

Rulemaking Authority 206.14(1), 206.485(1), 206.59(1), 213.06(1), 213.755(8) 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, 206.416, 206.43, 206.44, 206.485, 206.86, 206.874, 206.8745, 206.90, 206.91, 206.92, 206.9835, 206.9865, 206.9931, 206.9942, 206.9943, 212.0501, 213.255, 213.755 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, 7-20-11, 1-25-12, 1-17-13, 5-9-13, 1-20-14, 1-19-15, 7-28-15, 1-11-16, 1-10-17, 1-17-18, 9-17-18, 1-8-19, 7-8-19, 12-12-19, 4-16-20, 1-1-21.

12B-5.300 Aviation Fuel Licensees.

(1) Definitions.

(a) “Air carrier” means any carrier that is in the business of transporting persons or property for compensation or hire by air.

(b) “Aviation turbine fuel” means diesel fuel, kerosene, or jet fuel determined by the American Society of Testing Materials and classified as D-1655 or other current specifications.

(c) “Qualified air carrier” means air carriers conducting scheduled operations or all-cargo operations that are authorized under 14 C.F.R. § 121, 129, or 135.

(2) No change

(3) Exempt Sales.

(a) through (b) No change

~~(c) Sales of Aviation Fuel to Certain Commercial Air Carriers.~~

~~1. The sale of aviation fuel by a terminal supplier or wholesaler to an air carrier which offers transcontinental jet service and that, after January 1, 1996, but before July 1, 2016, increases the air carrier’s Florida workforce by more than 1,000 percent and by 250 or more full-time equivalent employee positions is exempt from tax.~~

~~2. To qualify for the exemption under this paragraph, air carriers meeting the criteria in subparagraph 1. must submit a written request to the Florida Department of Revenue, Account Management, P.O. Box 6480, Tallahassee, Florida 32314-6480.~~

~~3. Account Management will issue a letter to air carriers that qualify for the exemption, that such carriers have been authorized by the Department to purchase tax free aviation fuel.~~

~~(c) (d) Sale of Undyed Kerosene for Home Heating or Cooking.~~

~~1. Terminal suppliers who deliver undyed kerosene to a residence for home heating or cooking must accrue the 4.27 6.9 cents (\$0.0427) excise tax due on the number of gallons delivered on its Terminal Supplier Fuel Tax Return (Form DR-309631, incorporated by reference in ~~Rule rule~~ 12B-5.150, F.A.C.). To obtain a credit for tax accrued, terminal suppliers must complete Schedule 12, Ultimate Vendor Credit, and submit it to the Department with Form DR-309631.~~

~~2. Wholesalers that deliver tax-paid undyed kerosene to a residence for home heating or cooking may obtain a credit for the 4.27 6.9 cents (\$0.0427) excise tax paid to suppliers when filing their Wholesaler/Importer Fuel Tax Returns (Form DR-309632, incorporated by reference in ~~Rule rule~~ 12B-5.150, F.A.C.). To obtain a credit for tax paid, wholesalers must complete Schedule 12, Ultimate Vendor Credit, and submit it with Form DR-309632.~~

~~3. through 6. No change~~

~~(e) No change; renumbered to (d)~~

(4) Imposition and Payment of Tax.

(a) Tax Rate. An excise or license tax of 4.27 6.9 cents (\$0.0427) per gallon is imposed on the sale of aviation fuel or undyed kerosene, either upon importation into this State, or on the first sale at the loading rack of a terminal if imported by a terminal supplier.

(b) No change

(5) through (6) No change

(7) Refunds and Credits.

~~(a) Refunds to Air Carriers for Wages Paid to Employees.~~

~~1. Air carriers are Any carrier that is in the business of transporting persons or property for compensation or hire by air will be entitled to a refund and qualified air carriers are entitled to an additional refund of the tax paid on aviation fuel pursuant to Part part III of Chapter chapter 206, F.S. The total amount of refund paid to air carriers and qualified air carriers shall not exceed the amount of aviation fuel tax paid during the refund period.~~

2. The refund to air carriers is calculated by multiplying the wages paid to employees of the air carrier, who are based within this State and covered by the provisions of Chapter 443, F.S., by six-tenths of one percent (0.006). The amount of the refund will be an amount not to exceed six tenths of one percent of the wages paid by the air carrier to employees located or based within this State who are covered by the provisions of chapter 443, F.S.

3. The additional refund to qualified air carriers is calculated by multiplying the total Florida tax-paid gallons of aviation fuel purchased during the refund period by 1.42 cents (\$0.0142) per gallon.

4. ~~3-~~ To obtain a refund of aviation fuel tax paid, an air carrier is required to file an Application for Aviation Fuel Refund – Air Carriers (Form DR-191, incorporated by reference in ~~Rule rule~~ 12B-5.150, F.A.C.), with the Department. Form DR-191 must be filed for each calendar quarter no later than the last day of the month immediately following the calendar quarter for which the refund is claimed. The filing day may be extended one additional month when a written explanation that sets forth reasonable cause for delay in filing the refund application is submitted with the application and the last preceding prior quarter's refund application was timely submitted to the Department.

~~5. 4-~~ The Department must receive amended refund Amended applications for the prior calendar quarter by must be received by the Department of the current calendar quarter's deadline.

5. No change; renumbered to 6.

(b) through (c) No change

(8) No change

(9) Commercial Air Carriers; Registration; Reporting.

(a) No change

(b) Reporting. All licensed commercial air carriers are required to file a Florida Air Carrier Fuel Tax Return (Form DR-182, incorporated by reference in ~~Rule rule~~ 12B-5.150, F.A.C.), to report aviation fuel withdrawn from bonded inventories and use in domestic flights or imports of non-tax paid aviation fuel, and to remit tax due at the rate of ~~4.27 6.9~~ cents (~~\$0.0427~~) per gallon. Form DR-182 must be filed on or before the 20th day of each month for transactions during the previous month to avoid penalty for late filing. If the 20th day falls on a Saturday, Sunday, or legal holiday, payments accompanied by returns will be accepted as timely if postmarked or delivered to the Department on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For the purpose of this rule, a legal holiday means a holiday which is observed by federal or state agencies as this term is defined in chapter 683, F.S., and s. 7503 of the Internal Revenue Code of 1986, as amended. A "legal holiday" pursuant to s. 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

(c) No change

PROPOSED EFFECTIVE DATE: JANUARY 1, 2021.

Rulemaking Authority 206.14(1), 206.59(1), 206.97, 213.06(1) FS. Law Implemented 206.02, 206.03, 206.05, 206.43, 206.48, 206.485, 206.90, 206.91, 206.9825, ~~206.9826~~, 206.9835, 206.9865, 206.9875, 213.37 FS. History–New 11-21-96, Amended 10-27-98, 5-1-06, 1-20-14, 1-11-16, 1-10-17, 1-17-18, 1-1-21.

12B-5.400 Producers and Importers of Pollutants.

(1) through (2) No changes

(3) Licensing and Bonding.

(a) through (b) No change

(c) Each terminal supplier, importer, or wholesaler, of pollutants that holds a fuel license must add to its fuel bond an amount to be three times the average monthly pollutants tax paid or due during the preceding twelve calendar months. However, the total amount of the bond must not exceed \$300,000 ~~\$100,000~~.

(d) Each producer or importer of pollutants who does not hold a valid fuel license must file with the Department, a bond in an amount to be three times the average monthly pollutants tax paid or due during the preceding twelve calendar months. The bond shall not exceed \$300,000 ~~\$100,000~~.

(e) No change

(4) through (7) No change

PROPOSED EFFECTIVE DATE: JANUARY 1, 2021.

Rulemaking Authority 206.14(1), 206.59(1), 213.06(1) FS. Law Implemented 206.9915, 206.9925, 206.9931, 206.9935, 206.9941, 206.9942, 206.9943, 213.755 FS. History–New 11-21-96, Amended 10-27-98, 5-1-06, 6-1-09, 1-25-12, 1-17-18, 1-1-21.

NAME OF PERSON ORIGINATING PROPOSED RULE: Tammy Miller

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 22, 2020

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: August 26, 2020