

DEPARTMENT OF ECONOMIC OPPORTUNITY

Division of Community Development

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PURPOSE AND EFFECT: To implement sections 288.9961 and 288.9962, Florida Statutes, which establish the Florida Office of Broadband within the Department for the purpose of receiving, evaluating and awarding grants to applicants who seek to expand broadband internet service to unserved areas within the state of Florida.

SUMMARY: These new rules will provide potential grant applicants with the application form and necessary information about the evaluation and scoring criteria that the Florida Office of Broadband will use to determine grant awards. The rules also implement the application challenge process as set forth in section 288.9962(6)(c).

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: The Agency has previously reviewed the statutory requirements and determined that the proposed new rules will not have an adverse impact or associated regulatory cost that exceeds any of the criteria 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: 288.9961(5)(d), 288.9962(5) FS

LAW IMPLEMENTED: 288.9961, 288.9962 FS

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: Leslie Bryson, Department of Economic Opportunity, 107 E. Madison Street, MSC 110,

Tallahassee, FL 32399, leslie.bryson@deo.myflorida.com, (850)245-7183.

THE FULL TEXT OF THE PROPOSED RULE IS:

73C-50.001 Authority; Incorporation

(1) In addition to complying with section 288.9962, F.S., recipients of funds from the Broadband Opportunity Program shall comply with the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) requirements identified in Title 31 Code of Federal Regulations (CFR) Part 35 (7-1-2021 Edition), <http://www.flrules.org/Gateway/reference.asp?No=Ref-AAAAA>, as amended by 87 Fed Reg. 4338 (Jan. 27, 2022), <http://www.flrules.org/Gateway/reference.asp?No=Ref-BBBBB>, adopted and incorporated herein by reference for use throughout this chapter and available at the Florida Office of Broadband’s website, www.floridajobs.org/broadband.com.

(2) In instances where the SLFRF provisions differ from the requirements of the Broadband Opportunity Program, the SLFRF provisions shall prevail.

(3) The following forms are adopted and incorporated herein by reference. The forms are also available at the Office’s website, www.floridajobs.org/broadband.com.

(a) Broadband Opportunity Program Grant Application, effective XX-2022, <http://www.flrules.org/Gateway/reference.asp?No=Ref-CCCCC>.

(b) Broadband Opportunity Program Scoring and Evaluation Criteria, effective XX-2022, <http://www.flrules.org/Gateway/reference.asp?No=Ref-DDDDD>.

Rulemaking Authority 288.9961(5)(d), 288.9962(5) FS. Law Implemented 288.9962 FS. History–New XX-XX-22

73C-50.002 Definitions

The terms used in this part are defined as follows:

(1) “Applicant” means an applicant for funding under the Broadband Opportunity Program.

(2) “Broadband Internet Service Provider” or “Provider” means a provider of the services defined in section 288.9961(2)(a), F.S.

(3) “Program” means the Broadband Opportunity Program, established within the Florida Office of Broadband for the purpose of expanding broadband Internet service to unserved, underserved and rural areas of the state.

(4) “Rural” means a rural community as defined in Section 288.0656, F.S. Rulemaking Authority 288.9961(5)(d) FS. Law Implemented 288.9962 FS. History–New XX-XX-22.

73C-50.003 Application Requirements and Process

(1) This rule applies to Applicants seeking grant funding under the Program.

(2) The Program is a cost reimbursement program. Therefore, funding will be provided at regular intervals to grant recipients after expenses have been incurred to reimburse for those expenses. The period(s) when reimbursement may be requested and the methods to request reimbursement will be set forth in the grant agreement between the Office and awardee and follow all statutory requirements.

(3) Applicants eligible for grant awards from the Program are listed in section 288.9962(3), F.S.

(4) To be considered for grant funding under the Program, Applicants must show community support from the local community within and near the project area and/or engagement with the county's Local Technology Planning Team when submitting a Broadband Opportunity Program Grant Application, which is incorporated by reference in Rule 73C-50.001, F.A.C., and available on the Office's website, www.floridajobs.org/broadband, to the Office within the noticed application window.

(5) Applications will be accepted for at least seven and no more than 45 days from the date the application window opens. The application window opening and closing dates will be noticed in the Florida Administrative Register and also announced on the Office's website, www.floridajobs.org/broadband, at least five days before the opening date of the application window. Within three business days of the application window closing date, the Office will post the list of submitted potential projects to begin the 45-day challenge window.

(6) Applications shall be submitted to the Office using the Broadband Opportunity Program Grant Application. Any and all confidential business information or proprietary information provided on the Broadband Opportunity Program Grant Application and/or supporting documentation provided along with the application must be identified upon submission and a redacted copy of the same material provided to the Office concurrent with when the claim of confidentiality or proprietary protection is asserted. Each individual portion of the redacted copy that the Applicant asserts as confidential must contain a citation to the specific law making the content of the redacted portion confidential.

(7) Applications must be received by the Office by 5:00 p.m. (Eastern Time) on the closing date of the application window. Late applications may not be reviewed unless funding remains after all eligible applications have been funded. Whether or not a late application will be reviewed will be based on the total dollars requested by all Applicants from the Program for all eligible projects as compared to the total funding appropriated to the Office for the Program.

(8) Applications should be submitted through the portal on the Office's website, www.floridajobs.org/broadband. The Office will also accept applications submitted via mail or hand-delivery to the Department of Economic Opportunity, Florida Office of Broadband, 107 East Madison Street, Mail Station #160, Caldwell Building, Tallahassee, Florida 32399-4128, or via e-mail to Broadband@deo.myflorida.com.

(9) The Office will not process applications that are not submitted using the Broadband Opportunity Program Grant Application.

Rulemaking Authority 288.9961(5)(d) FS. Law Implemented 288.9961(4)(b), 288.9962 FS. History—New XX-XX-22.

73C-50.004 Application Review

(1) Within three business days after the close of the application window, the Office will publish a list of the proposed unserved areas to be served, the proposed broadband Internet speeds of the areas to be served, and a service map of the proposed project areas at www.floridajobs.org/broadband.

(2) Thereafter, the Office shall conduct an initial review of all applications for completeness, accuracy, and applicant eligibility. Applications which meet these three criteria will be evaluated and scored pursuant to the Broadband Opportunity Program Scoring and Evaluation Criteria, incorporated by reference in Rule 73C-50.001, F.A.C., and also available at the Office's website, www.floridajobs.org/broadband.

(3) After the initial review of the application, the Office will notify the applicant, in writing, of any conditions that must be met to cure application deficiencies to complete the application. The Applicant will then be allowed 15 calendar days from the date on the notice to correct the deficiency or deficiencies identified in the notice and to resubmit the deficient portions of the application. The date of resubmission is the date a complete submission is received by the Office. After full, timely resubmission to cure any application deficiencies, the Office will review the resubmission following the same steps and procedure under this section, beginning at subsection (2) above.

(4) Applications received after the resubmission deadline or which do not correct the application deficiency or deficiencies may not be further evaluated. Whether or not a late application will be reviewed will be based on the total dollars requested by all Applicants from the Program for all eligible projects as compared to the total funding appropriated to the Office for the Program.

(5) Applications are considered complete when timely submitted to the Office with all questions on the Broadband Opportunity Program Grant Application answered and all required information and supporting documentation provided.
Rulemaking Authority 288.9961(5)(d) FS. Law Implemented 288.9962 FS. History—New XX-XX-22.

73C-50.005 Application Challenge Process

(1) A Broadband Internet Service Provider that provides existing service in or adjacent to a proposed project area may submit a challenge to an application. The Provider may challenge all or a portion of a proposed project area.

(2) Challenges must be submitted within 45 days of the Office's publication of the list of the proposed unserved areas to be served. Challenges must be in writing, with an affirmative certification by the Provider of the accuracy of the information asserted, including a Geographic Information Systems map of the challenged area, and containing detailed information demonstrating one or more of the three factors set forth in section 288.9962(6)(c), F.S. The Provider must also submit any other documentation to support the challenge.

(3) Challenges may be submitted to the Department of Economic Opportunity, Florida Office of Broadband, 107 East Madison Street, Mail Station #160, Caldwell Building, Tallahassee, Florida 32399-4128, or via e-mail at Broadband@deo.myflorida.com. Any and all confidential business information or proprietary information must be identified upon submission and a redacted copy of the same material provided to the Office concurrent with the claim of confidentiality or proprietary protection. Each individual portion of the redacted copy that the broadband Internet service Provider asserts as confidential must contain a citation to the specific law making the content of the redacted portion confidential.

(4) Within three business days of receiving a timely challenge, the Office will notify the Applicant, in writing, and provide a copy of the challenge. The Applicant shall have 30 calendar days from the date on the notice of challenge to respond, and the Applicant's application will be placed in pending status.

(5) The Applicant's response must address, in detail, each factor identified in the challenge and include concise statements of the Applicant's position regarding each factor. The response must also state with specificity the Applicant's reason(s) the challenge is not valid and include any supporting documentation. If the Applicant and challenging entity can mutually settle the challenge, the settlement must be submitted to the Office, in writing, within 30 days of the challenge notification.

(6) The Office shall evaluate challenges in accordance with section 288.9962(6)(e) and (f), F.S. The Office shall have 30 calendar days to review an Applicant's response and issue a written determination granting or denying the challenge. When a challenge is granted for only a portion of the proposed project area, the Office shall award a grant to the unchallenged and unserved portion of the grant application.

(7) The Office shall publish a list of all grant applications received and all written challenges and the results of those

challenges on its website at www.floridajobs.org/broadband in accordance with section 288.9962(10), F.S. Rulemaking Authority 288.9961(5)(d) FS. Law Implemented 288.9962 FS. History--New XX-XX-22.

73C-50.006 Evaluation Criteria

(1) Applications shall be evaluated and scored based on the specific criteria and quantitative scoring system set forth in the Broadband Opportunity Program Scoring and Evaluation Criteria, incorporated by reference in Rule 73C-50.001, F.A.C., and available on the Office's website at www.floridajobs.org/broadband, in the following categories:

- (a) Broadband Impact
- (b) Network Scalability
- (c) Project Viability and Sustainability
- (d) Economic Distress
- (e) Funding Sources and Community Support
- (f) Alignment with State Strategic Plan
- (g) Project Readiness
- (h) Affordability and Adoption Assistance

(2) The sum of the numerical scores awarded to the Applicant under each category shall be the total numerical score for the Applicant.

(3) Applicants with the highest numerical rankings will be selected for funding.

(4) The number of Applicants funded will be determined by the total available funding.

Rulemaking Authority 288.9961(5)(d) FS. Law Implemented 288.9962 FS. History--New XX-XX-22.

73C-50.007 Grant Awards

(1) Eligible Applicants must obtain a minimum evaluation score of 130 points to be considered for funding; however, this does not guarantee an award.

(2) Funding under the Program shall be awarded in accordance with section 288.9962(8), F.S.

(3) Grant awards shall not exceed \$5 million for a single project.

(4) Grant awards may not fund more than 50 percent of the total cost of the project, when combined with any state or local funds.

(5) Successful Applicants will be notified in writing and will be required to enter into a written grant agreement with the Office according to the terms and conditions specified in section 288.9962(9), F.S. and in accordance with all other applicable laws. The successful Applicant shall not receive any funding from the Program until the Office and successful Applicant enter into a grant agreement.

(6) All grant funds awarded must be fully obligated by December 31, 2024, and expended by December 31, 2026.

(7) Of the total appropriated dollars, and after subtracting any allowable administrative funds, the Office will initially set

aside 40 percent for eligible project applications within a rural community. If all set aside dollars are not awarded, the set aside will no longer apply and all remaining dollars will be awardable to eligible project applications.

Rulemaking Authority 288.9961(5)(d) FS. Law Implemented 288.9962 FS. History—New XX-XX-22.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Katie Smith, Director, Florida Office of Broadband
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dane Eagle, Secretary, Department of Economic Opportunity
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 28, 2022
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: June 15, 2022

Section III

Notice of Changes, Corrections and Withdrawals

DEPARTMENT OF REVENUE

Property Tax Oversight Program

RULE NO.: 12D-16.002
RULE TITLE: Index to Forms
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. 48 No. 169, August 30, 2022 issue of the Florida Administrative Register.

The following change is made in response to written public comments regarding proposed Form DR-465, Application for Catastrophic Event Tax Refund. A revised draft of Form DR-465 is available on the Department’s website.

The third sentence of the first paragraph under the section “Completed by Applicant” on page 2 of Form DR-465 has been revised, so that, when adopted, that sentence will read as follows:

Regardless of a scheduled informal conference with the property appraiser, petitions involving determinations on refund of taxes for catastrophic event may be submitted to the value adjustment board.

Section IV Emergency Rules

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Consumer Services

RULE NO.: 5JER22-5
RULE TITLE: Volatility Standards for Gasoline
SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: As a result of the effects of Hurricane Ian, and in light of ongoing distribution challenges, extreme and unusual circumstances exist that could foreseeably prevent the distribution of an adequate fuel supply to consumers throughout the state. Adoption of this emergency rule waiving certain volatility standards will help increase available fuel supply, assist in recovery efforts, and protect the welfare of Florida consumers.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: This emergency rule was initiated following discussions with industry members who have access to the most up-to-date information available regarding fuel availability and distribution. The rule will apply to all fuel suppliers and will help to ensure a consistent supply of fuel in Florida while alleviating additional strain on Florida’s fuel market. As this is an unprecedented situation, prompt action based on the information available is both necessary and fair.

SUMMARY: This emergency rule allows fuels of different volatility classes than those set forth in ASTM International designation D4814-20a, as adopted in rule 5J-21.001, F.A.C., for the periods indicated.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Blair Bodenmiller, Assistant Director of Consumer Services, 2005 Apalachee Parkway, Tallahassee, FL 32399, (850)410-3675.

THE FULL TEXT OF THE EMERGENCY RULE IS:

5JER22-5 Volatility Standards for Gasoline
Volatility Class D-4 fuels as specified in ASTM International designation D4814-20a, shall be allowed for the time period from September 28, 2022, through October 31, 2022, for retail distribution and sale.

Rulemaking Authority 525.037, 525.14 FS. Law Implemented 525.01, 525.037, 525.14 FS. History – New 9-28-22.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: 9/28/22