

## Section IV Emergency Rules

### BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

### DEPARTMENT OF THE LOTTERY

RULE NO.: 53ER06-47  
 RULE TITLE: Instant Game Number 668, TRIPLE CASH

**SUMMARY OF THE RULE:** This emergency rule describes Instant Game Number 668, "TRIPLE CASH," for which the Department of the Lottery will start selling tickets on a date to be determined by the Secretary of the Department. The rule sets forth the specifics of the game; determination of prizewinners; estimated odds of winning, value and number of prizes in the game.

**THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS:** Faith L. Schneider, Legal Analyst, Department of the Lottery, 250 Marriott Drive, Tallahassee, Florida 32399-4011

**THE FULL TEXT OF THE EMERGENCY RULE IS:**

53ER06-47 Instant Game Number 668, TRIPLE CASH.

(1) Name of Game. Instant Game Number 668, "TRIPLE CASH."

(2) Price. TRIPLE CASH lottery tickets sell for \$1.00 per ticket.

(3) TRIPLE CASH lottery tickets shall have a series of numbers in machine readable code (or bar code) on the back of the ticket, along with a validation number under the latex area on the ticket. To be a valid winning TRIPLE CASH lottery ticket, the ticket must meet the applicable requirements of Rule 53ER06-4, F.A.C.

(4) The "YOUR NUMBERS" play symbols and play symbol captions are as follows:

<b>1</b> ONE	<b>2</b> TWO	<b>3</b> THREE	<b>4</b> FOUR	<b>5</b> FIVE
<b>6</b> SIX	<b>7</b> SEVEN	<b>8</b> EIGHT	<b>9</b> NINE	<b>10</b> TEN
<b>11</b> ELEVN	<b>12</b> TWELV	<b>13</b> THRTN	<b>14</b> FORTN	<b>15</b> FIFTN
<b>16</b> SIXTN	<b>17</b> SVNTN	<b>18</b> EGHTN	<b>19</b> NINTN	

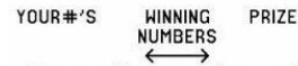
(5) The "WINNING NUMBERS" play symbols and play symbol captions are as follows:

<b>1</b> ONE	<b>2</b> TWO	<b>3</b> THREE	<b>4</b> FOUR	<b>5</b> FIVE
<b>6</b> SIX	<b>7</b> SEVEN	<b>8</b> EIGHT	<b>9</b> NINE	<b>10</b> TEN
<b>11</b> ELEVN	<b>12</b> TWELV	<b>13</b> THRTN	<b>14</b> FORTN	<b>15</b> FIFTN
<b>16</b> SIXTN	<b>17</b> SVNTN	<b>18</b> EGHTN	<b>19</b> NINTN	

(6) The prize symbols and prize symbol captions are as follows:

<b>TICKET</b> TICKET	<b>\$1.00</b> ONE	<b>\$5.00</b> FIVE	<b>\$10.00</b> TEN	<b>\$20.00</b> TWENTY	<b>\$25.00</b> THY FIVE
<b>\$50.00</b> FIFTY	<b>\$100</b> ONE HUN	<b>\$250</b> THO FTY	<b>\$500</b> FIV HUN	<b>\$1,000</b> ONE THO	<b>\$3,000</b> THR THO

(7) The legends are as follows:



(8) Determination of Prizewinners.

(a) A ticket having a number in the "YOUR NUMBERS" play area that matches any number in the "WINNING NUMBERS" play area shall entitle the claimant to the corresponding prize shown for that number. The prizes are: TICKET \$1.00, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$250, \$500, \$1,000 and \$3,000.



(b) A ticket having a "WIN" symbol in the "YOUR NUMBERS" play area shall entitle the claimant to triple the prize shown. A claimant who is entitled to a prize of a "TICKET" shall be entitled to a prize of a \$1.00 instant ticket, except as follows. A person who submits by mail a TRIPLE CASH lottery ticket which entitles the claimant to a prize of a \$1.00 instant ticket and whose mailing address is outside the state of Florida will receive a check for \$1.00 in lieu of an actual ticket.

(9) The estimated odds of winning, value, and number of prizes in Instant Game Number 668 are as follows:

GAME PLAY	WIN	ODDS OF	NUMBER OF
TICKET	\$1 TICKET	1 IN	WINNERS IN
			56 POOLS OF
			180,000 TICKETS
			PER POOL
\$1	\$1	10.00	1,008,000
\$1 (COIN)	\$3	12.00	840,000
\$1 x 5	\$5	30.00	336,000
\$10	\$5	50.00	201,600
\$5 (COIN)	\$10	150.00	67,200
\$25	\$15	300.00	33,600
\$10 (COIN)	\$25	300.00	33,600
\$10 x 5	\$30	1,800.00	5,600
\$50	\$50	11,250.00	896
\$25 (COIN)	\$50	11,250.00	896
\$20 x 5	\$75	45,000.00	224
\$100	\$100	90,000.00	112
	\$100	90,000.00	112

\$100 (COIN)	\$300	90,000.00	112
\$100 x 5	\$500	420,000.00	24
\$250 x 2	\$500	336,000.00	30
\$500	\$500	504,000.00	20
\$1,000 (COIN)	\$3,000	2,520,000.00	4
\$3,000	\$3,000	2,520,000.00	4

(10) The estimated overall odds of winning some prize in Instant Game Number 668 are 1 in 3.99. Prizes, including the top prizes, are subject to availability at the time of ticket purchase. Prizes may be unavailable due to prior sale or other causes occurring in the normal course of business including, but not limited to, ticket damage, defect, theft, or loss.

(11) For reorders of Instant Game Number 668, the estimated odds of winning, value, and number of prizes shall be proportionate to the number of tickets reordered.

(12) By purchasing a TRIPLE CASH lottery ticket the player agrees to comply with and abide by all prize payment rules of the Florida Lottery.

(13) Payment of prizes for TRIPLE CASH lottery tickets shall be made in accordance with rules of the Florida Lottery governing payment of prizes.

A copy of the current rule can be obtained from the Florida Lottery, Office of the General Counsel, 250 Marriott Drive, Tallahassee, Florida 32399-4011.

Specific Authority 24.105(9)(a), (b), (c), 24.109(1), 24.115(1) FS. Law Implemented 24.105(9)(a), (b), (c), 24.115(1) FS. History—New 8-11-06.

THIS EMERGENCY RULE TAKES EFFECT IMMEDIATELY UPON BEING FILED WITH THE DEPARTMENT OF STATE.

EFFECTIVE DATE: August 11, 2006

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**FINANCIAL SERVICES COMMISSION**

**Office of Insurance Regulation**

RULE NO.: 69OER06-3  
 RULE TITLE: Adoption of the Property and Casualty Joint Underwriting Association

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: The Financial Services Commission and the Office of Insurance Regulation ("Office") hereby state that the following circumstances constitute an immediate danger to the public health, safety, or welfare:

The State of Florida experienced eight hurricanes and four tropical storms during 2004 and 2005, with total insured losses estimated at \$38.9 billion. These natural disasters and other

factors have limited the availability of property and casualty insurance and reinsurance for property owners and have dramatically increased its costs.

These losses have resulted in turmoil in the commercial property market. Businesses in Florida, especially those located in the proximity of the coast, are finding it extremely difficult to find an adequate level of coverage, that is, coverage that is required by state law or by responsible or prudent business practices. Hundreds of Florida business owners have voiced to the Governor, members of the Cabinet, and the Commissioner a hardship regarding their inability to obtain commercial insurance and having to shut down their businesses and of being unable to sell businesses or real property because prospective buyers cannot obtain the required insurance. Commercial insurance brokers have expressed how they are alarmed over the diminishing property insurance market currently existing in Florida and how their clients are unable to obtain insurance for their business properties. Florida business owners have written to state that the inability to find insurance has resulted in their mortgage companies threatening to "force place" wind/hail coverage or foreclose on mortgages. Some business owners, who provide jobs for their local communities, have expressed the likelihood of bankruptcy due to the insurance crisis.

On August 11, 2006, the Commissioner participated in a town hall gathering in Bradenton called by Representative Galvano, and attended by business owners, commercial insurance brokers and agents, and citizens. Speaker after speaker expressed their frustrations at their inability to secure the insurance they need to protect their business property.

A recent online poll conducted by the Office found that of the 1,900 businesses responding, 42 percent were either cancelled or non-renewed by their insurer in the last six months and 32 percent were able to secure new coverage but with generally much higher rates, less coverage or both. Some of the respondents said they may relocate their businesses to other states due to insurance difficulties. Currently there does not exist a joint underwriting association for businesses, or commercial non-residential property owners located outside the boundaries of the areas eligible for coverage in the former Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. For most of the land area of Florida, there is currently no joint underwriting association coverage available for commercial, non-residential property insurance.

The worst of the hurricane season is quickly approaching. Insurance is a necessary part of any responsible business plan. A non-emergency rule is being promulgated but it will not be effective in time to provide coverage to businesses before the end of the hurricane season. Reliance on the non-emergency rule would result in hundreds of businesses facing what has been forecast to be a very busy hurricane season without the protection of insurance.

REASONS FOR CONCLUDING THAT THE PROCEDURE USED IS FAIR UNDER THE CIRCUMSTANCES: The Financial Services Commission believes that adopting an emergency rule is the fairest method to protect the public because of the inability of the businesses in Florida to purchase property insurance. This is especially true as the height of the 2006 Hurricane Season is quickly approaching. The Property and Casualty Joint Underwriting Association is the only way to provide insurance to these businesses immediately. The statute, 627.351(5) requires that this risk apportionment plan must be adopted by rule. A permanent rule is being promulgated, but will not be effective in time to provide insurance for the hurricane season.

In consideration of the emergency conditions currently existing, and given the Office's responsibility to protect the public interest and implement the Insurance Code, an emergency rule is necessary.

SUMMARY OF THE RULE: Emergency Rule 69OER06-3 adopts a joint underwriting plan which will ensure that businesses in Florida that are in good faith entitled to, but are unable to, obtain an adequate level of insurance will be able to purchase the property insurance they need.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Bob Prentiss, Assistant General Counsel, Office of Insurance Regulation, 200 East Gaines Street, Tallahassee, FL 32399-4210, (850)413-4183 or E-mail at: bob.prentiss @fldfs.com

THE FULL TEXT OF THE EMERGENCY RULE IS:

69OER06-3 Adoption of the Property and Casualty Joint Underwriting Association.

(1) Purpose and scope of the emergency rule. The purpose of this emergency rule is to adopt a joint underwriting plan to equitably apportion among insurers authorized in this state to write property and casualty insurance the underwriting of insurance to persons with risks eligible, as defined in the statutes and this rule, and who are in good faith entitled to, but are unable to, obtain an adequate level of insurance coverage, including excess coverage, through the voluntary market. Upon adoption of this plan, all insurers authorized in this state to underwrite property or casualty insurance shall participate in this plan.

This Plan shall be construed to conform, and, when necessary, amended to conform to the provisions of Subsection 627.351(5), Florida Statutes.

(2) Definitions. The following terms have the following meanings for purposes of this rule:

(a) "Adequate level of coverage" means that coverage which is required by state law or by responsible or prudent business practices.

(b) "Assessable Premium" means the net direct premiums of each participating insurer for commercial property insurance risks written by the insurer, excluding the premium associated

with commercial residential insurance policies. Assessable Premium does not include premium associated with liability insurance or kinds of insurance other than property insurance.

(c) "The Association" means the Property and Casualty Joint Underwriting Association.

(d) "Market assistance plan" means the market assistance plan adopted pursuant to Section 627.3515, Florida Statutes.

(e) "Net direct premium" means gross direct premiums, including policy and membership fees less return premiums and premiums on policies not taken.

(f) "Office" means the Office of Insurance Regulation.

(g) "Participating insurer" means each and every insurer authorized in this state to underwrite property or casualty insurance.

(h) "Qualifying quoted premium" means a quote on coverage from an insurer that meets the following criteria:

1. In the case of an admitted carrier, the quoted premium must not exceed the premium available for a given classification currently in use by the Association or the premium developed by using the rates and rating plans on file with the office by the quoting insurer, whichever is greater.

2. In the case of an unauthorized surplus lines insurer, the quoted premium must not exceed the premium available for a given classification currently in use by the Association by more than 25 percent, after consideration of any individual risk surcharge or credit.

(i) "Servicing carrier" means a participating insurer which agrees to be and is designated by the office to provide policyholder and claims service, including the issuance of policies, on behalf of the participating insurers.

(j) "Substantially impair the ability of the entity to conduct its affairs" means that the lack of insurance would result in one or more of the following conditions:

1. An event of default on an existing business loan or mortgage; or

2. A structure that is necessary for the business to continue operations could not be rebuilt in the event of a catastrophe; or

3. The business entity could not continue to meet its legal obligations.

(k) "Unavailable in the voluntary market" means that the insured or agent has made a diligent search, has made a good-faith application for coverage from a minimum of one surplus lines insurance company, and three authorized insurance companies, and the Florida Market Assistance Plan has made a search and an adequate level of coverage has not been found or the quoted premium exceeds the limitations of Section 627.351(5)(a)1.e., Florida Statutes.

(3) Powers of the Association. The Association may perform any activity involved in the business of insurance including the borrowing of funds and entering into financing agreements.

(4) Organization: The Board of Governors.

(a) The Association shall be overseen by a thirteen-member Board of Governors (hereinafter "the Board") as provided by statute. Board members shall be appointed to serve two-year terms, but may be removed and replaced at any time by the Chief Financial Officer. The first term of office for all Board members shall begin upon the date of the Chief Financial Officer's first appointment and shall expire two years later unless replaced by the Chief Financial Officer at an earlier time. Any replacement appointments also shall be made for a period of two years. Four of the Board members shall be representatives of insurance company trade associations, and two members shall be representatives of agent associations. The remaining seven members may be any persons appointed by the Chief Financial Officer. The Board may appoint committees and advisory groups as it deems necessary. The Risk Underwriting Committee is appointed in the manner provided by the statute and is not a committee or subcommittee of the Board. However, its decisions are limited to the determination of eligibility of individual risks for coverage. The Board retains the authority to design the policy forms and rates for the insurance to be offered by the Association, subject to approval by the Office.

(5) Board Meetings. The Board shall meet as often as necessary, but at least twice annually. The Board will conduct its meetings in accordance with Robert's Rules of Order and will make its decisions on a simple majority of all Board members present unless otherwise provided by statute. Board meetings shall be conducted in compliance with Chapter 286, Florida Statutes (the Sunshine Law).

(6) Board Powers and Immunities. Board members are authorized to perform any activity that Directors of corporations may perform and any activity of the Association. Pursuant to Section 627.351(5)(f), Florida Statutes, Board members and employees of the Association are immune from liability for their actions taken in the performance of their duties for the association. In the event that a Board member is served with a civil complaint with respect to any business of the Association, the Board member shall be entitled to indemnification from the Association for costs and reasonable attorney's fees unless and until a determination is made by a court of competent jurisdiction that the Board member engaged in conduct that constitutes a felony under Florida law. Board members are also entitled to reimbursement for the ordinary costs of attending meetings, but are not otherwise entitled to salaries for Board service.

(7) Contracts and Employees.

(a) The Board may enter into contracts with experts and other advisors to assist in conducting the business of the Association at rates negotiated for each engagement. To the extent possible, unless the contract would be exempt from competitive bid for a state agency or unless the Board determines that an emergency exists, contracts for more than \$100,000 in any year shall be competitively bid, and contracts

under \$100,000 shall be awarded only after a minimum of three quotes are obtained from competing vendors. The Association may enter into contracts with other statutorily-created entities such as other JUA's, guaranty associations or their managers, the Market Assistance Plan, or the Florida Hurricane Catastrophe Fund without competitive bids or quotes.

(b) The Board may hire such staff and executive staff as it deems necessary to be compensated by the Association. The Board shall make every effort to retain executive staff with previous experience or expertise in the commercial property insurance market. Because Section 627.351(5), Florida Statutes, requires that a servicing carrier be used for policyholder services, the Association is not expected to hire an extensive staff. However, it shall retain as many employees as necessary to ensure that an appropriate level of policyholder service is maintained.

(c) The Board shall designate positions that are to function as Senior Management of the organization. All senior managers and Board members shall comply with Part III of Chapter 112, Florida Statutes, including the code of ethics, and the public disclosure and reporting of financial interests pursuant to Section 112.3145, Florida Statutes. Senior managers and Board members are required to file such disclosures with the Office of Insurance Regulation. At least quarterly, the executive director shall submit a list of the names of the senior managers and members of the Board of Governors to the Commission on Ethics.

(d) A senior manager of the Association may not represent a person or entity before the Association for a period of two years after the date of termination of employment. The Board shall implement a detailed Ethics and Conflicts of Interest Policy and a Policy for Procurement of Contracts that avoids any actual or apparent conflict of interest by any employee, vendor, or Board member of the association.

(8) Appointment of Servicing Carriers. The Office may appoint one or more participating insurance companies to service policies either for policy issuance, claims, or any combination of services. The Association shall pay the fees of such appointed servicing carrier pursuant to a contract negotiated between the carrier and the association, and subject to the approval of the Office.

(9) Form of the insurance to be written by the Association. The Association may write commercial property insurance including direct insurance, excess insurance, and reinsurance of commercial property risks.

(10) Eligibility of Risks.

(a) A risk shall be eligible for such commercial property insurance as is required by Florida law if the insurance is unavailable in the voluntary market, including the market assistance program and the surplus lines market.

(b) A commercial risk not eligible under (a) (that is, because the coverage is not required by Florida law) shall be nevertheless eligible for such commercial property insurance if:

1. The insurance is unavailable in the voluntary market, including the market assistance plan and the surplus lines market in accordance with paragraph (2)(g); and

2. Failure to secure the insurance would substantially impair the ability of the entity to conduct its affairs; and

3. The risk is not determined by the Risk Underwriting Committee to be uninsurable.

(11) Classification System. For purposes of this rule commercial property insurance is considered a class of property insurance. Other classes of insurance may not be written by the Association without an amendment to this rule.

(12) Market Assistance Plan; Activation of Coverage.

(a) If the market assistance plan receives a minimum of 100 commercial property quote requests within a 3-month period, or 200 commercial property quote requests within a 1-year period or less, for a given class of risk contained in the classification system defined in the plan of operation of the Association, and unless at least 80 percent of such applicants find coverage as a result of the market assistance program referral at or below the qualifying quoted premium, the Commercial Property Insurance class of risk shall immediately be eligible for coverage in the Joint Underwriting Association.

(b) Any market assistance plan application that is rejected because an individual risk is so hazardous as to be practically uninsurable, or because the likelihood of a loss for such a risk is substantially higher than for other risks of the same class due to individual risk characteristics, prior loss experience, unwillingness to cooperate with a prior insurer, physical characteristics and physical location, will be excluded from the minimum percentage calculation provided in paragraph (a). In the event that there is any legal or administrative challenge to a determination by the Office that the conditions of this subsection have been met for eligibility for coverage in the Association for a given classification, any eligible risk may obtain coverage during the pendency of any such challenge.

(13) Removal of Risks.

(a) The Association shall establish a procedure to identify and remove risks from the plan once such risks no longer meet the eligibility requirements for coverage by the Association. At each 6-month interval after the activation of any class of risks, the Board of Governors or its designated committee shall review the number of applications to the market assistance plan for that class. If, based on such review, it is determined that at least 90 percent of such applications have been provided a qualifying quoted premium, the Association shall cease underwriting new applications for such class within 30 days, and notification of this decision shall be sent to the office, the major agents' associations, and the Board of Directors of the market assistance plan. All policies which were previously

written for that class shall continue in force until their normal expiration date, at which time, subject to the required timely notification of nonrenewal by the Association, the insured may then elect to reapply to the Association according to the requirements of eligibility. If, upon reapplication, those previously insured Association risks meet the eligibility requirements, the Association shall provide coverage available from the Association.

(b) In addition, the Board may establish a plan for transfer of risk from the Association to other entities either through reinsurance or other risk transfer or risk financing mechanisms. The cost of such reinsurance or other risk transfer or risk financing arrangements may be included in the rates of the Association.

(14) Equitable apportionment of profits, losses and expenses.

(a) In the event an underwriting deficit exists for any policy year the plan is in effect, any surplus which has accrued from previous years and is not projected within reasonable actuarial certainty to be needed for payment for claims in the year the surplus arose shall be used to offset the deficit to the extent available.

(b) As to any remaining deficit, the Board of Governors of the Association shall levy and collect an assessment from participating insurers in an amount sufficient to offset such deficit. Such assessment shall be levied against the insurers participating in the plan during the year giving rise to the assessment. Any assessments against insurers for the lines of property insurance issued to commercial risks shall be recovered from the participating insurers in the proportion that the assessable premium of each insurer for commercial risks written during the preceding calendar year bears to the aggregate assessable premium written by all members of the plan for the lines of insurance included in the plan.

(c) The Board shall take all reasonable and prudent steps necessary to collect the amount of assessment due from each participating insurer and policyholder, including, if prudent, filing suit to collect such assessment. If the Board is unable to collect an assessment from any insurer, the uncollected assessments shall be levied as an additional assessment against the participating insurers and any participating insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying insurer. In addition, the failure of an insurer to pay an assessment timely shall constitute a violation of this rule subjecting the insurer to administrative action by the Office.

(15) Recoupment of Assessments. An insurer or insurer group may recoup any assessments that have been paid to the Association as provided for in Section 627.3512, Florida Statutes.

(16) Procedure for Assessments.

(a) To issue an assessment, the Board shall determine that the need for an assessment exists, and shall certify the need and the amount of the assessment to the Office. The Board may determine that an assessment is needed for start-up costs for the Association. The Office shall provide the Board with a list of participating insurers and the corresponding reported Assessable Premium volume. The Association may then apply any credits earned by the insurer and issue an assessment invoice to each participating insurer. An insurer that disagrees with the amount or calculation of its share of the assessment shall have 30 days from the date of issuance of the invoice within which to appeal to the Board to change the assessment calculation. If the Board decides to change the assessment calculation, the Association shall notify all participating insurers and shall send a new invoice if it determines that a new invoice is required. If an insurer fails to appeal the assessment calculation within 30 days from the date of issuance of the initial invoice, the assessment calculation for each participating insurer becomes final and unappealable, and the invoice must be paid within 30 days, or in 10 days if required for an emergency due to a hurricane. The Board may require payment in 10 days if a hurricane makes landfall in Florida and the Board anticipates that the assessment will be needed to fund claim payments. In addition to the civil action provided by statute, the failure of an insurer to pay an invoice when due shall constitute a violation of this rule subjecting the insurer to administrative action by the Office.

(17) Credits Against Assessments. The Board shall adopt a plan, subject to the approval of the Office, to provide each participating insurer the opportunity to earn credits against any deficit assessment for commercial property risks voluntarily written through the Market Assistance Plan by such insurer. Credits may be based upon the premium or policy limits for risk taken by the insurer pursuant to contract of excess insurance coverage or a reinsurance contract between the insurer and the Association. Credits may also be established, and may be greater, for risks taken by the insurer where the insurer writes the insurance coverage through the Market Assistance Plan without any participation by the Association whether or not the risk has been insured by the Association in preceding years. The Board may file amended plans for credit against assessments as often as necessary to encourage participation by the voluntary market. The plans shall be effective when approved and shall apply prospectively to assessments levied for the plan year during which they are in effect. The credit plan may provide for no credits to be given in the event that a bond issue is done, and the assessment is being made for the purpose of repayment of bond debt. An insurer shall not receive credits for its participation in a policy for an insured which it had nonrenewed or cancelled within the two years preceding the inception of the policy issued to the same insured by the Association.

(18) Reporting Requirements. The Board may establish the format of a report to be sent each quarter to each participating insurer informing the insurer of its share of profits, losses, and expenses under the plan. The Office may also establish the format of a report to be sent each quarter to the Office by each participating insurer reporting the volume of net direct premium to enable the Office to calculate each insurer's portion of any potential deficit assessment under this plan. The Office may require separate reporting for commercial residential and commercial non-residential risks for each line of insurance listed in the report. The lines of insurance anticipated to be included are lines 1, 2, 5.1, 5.2, 3, and 12 of the state page of the annual statement. The purpose of including the commercial residential premium written for property risks is solely to allow the total on the report to correlate to annual statement reporting, and is not intended to make commercial residential property premium part of the assessment base for this Association.

(19) Financing Arrangements.

(a) There are three different aspects of financing in which the Association is involved:

1. Financing for Operations – The Board may borrow money and may enter into financing agreements to fund start-up costs, operating expenses, or claim payments and associated loss adjustment expenses that occur during the existence of the Association.

2. Assessments for Underwriting Deficits – In the event an underwriting deficit exists for any policy year the plan is in effect, any surplus which has accrued from previous years and is not projected within reasonable actuarial certainty to be needed for payment for claims in the year the surplus arose shall be used to offset the deficit to the extent available. As to any remaining deficit, the Board shall levy and collect an assessment as provided above.

3. Assessments Following Issuance of Bonds – The governing body of any unit of local government, any residents or businesses of which are insured by the Association, may issue bonds as defined in Section 125.013, Florida Statutes, or Section 166.101, Florida Statutes, from time to time to fund an assistance program, in conjunction with the Association, for the purpose of defraying deficits of the Association. Revenue bonds may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to Section 252.36, Florida Statutes, making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and the protection and preservation of the economic stability of insurers operating in this state, and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will provide relief to claimants and policyholders of the joint underwriting association and insurers responsible for apportionment of

association losses. The unit of local government shall enter into such contracts with the Association as are necessary to carry out this subsection. Any bonds issued shall be payable from and secured by moneys received by the Association from assessments under this subsection, and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds. If any of the bonds remain unsold 60 days after issuance, the Office shall require all insurers subject to assessment to purchase the bonds, which shall be treated as admitted assets; each insurer shall be required to purchase that percentage of the unsold portion of the bond issue that equals the insurer's relative share of assessment liability under this subsection. An insurer shall not be required to purchase the bonds to the extent that the Office determines that the purchase would endanger or impair the solvency of the insurer.

(b) Section 627.351(5)(c)6.a., Florida Statutes, states, "The Legislature finds that the potential for unlimited assessments under this paragraph may induce insurers to attempt to reduce their writings in the voluntary market, and that such actions would worsen the availability problems that the Association was created to remedy. It is the intent of the Legislature that insurers remain fully responsible for covering any deficits of the association; however, it is also the intent of the Legislature to provide a means by which assessment liabilities may be amortized over a period of years." The total amount of deficit assessments with respect to any year may not exceed 10 percent of the Assessable Premium for all insurers for the prior year, except that if the deficit with respect to any plan year exceeds such amount and bonds are issued to defray the deficit, the total amount of assessments with respect to such deficit may not in any year exceed 10 percent of the deficit, or such lesser percentage as is sufficient to retire the bonds as determined by the Board, and shall continue annually until the bonds are retired.

(20) Deferment of Assessments. An assessment of an insurer may be deferred, in whole or in part, if the Office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments.

(21) Risk Underwriting Committee.

(a) A Risk Underwriting Committee of the Joint Underwriting Association composed of three members experienced in evaluating insurance risks is created to review risks rejected by the voluntary market for which application is made for insurance through the joint underwriting plan. The committee shall consist of a representative of the market assistance plan created under Section 627.3515, Florida

Statutes, a member selected by the participating insurers, and a member named by the Chief Financial Officer. The Risk Underwriting Committee shall appoint such advisory committees as are provided for in the plan and are necessary to conduct its functions. The Association may pay or reimburse the salaries and expenses of the members of the Risk Underwriting Committee and its advisory committees for the time spent on behalf of the Risk Underwriting Committee. The Risk Underwriting Committee shall recommend a plan, subject to approval by the Office, to establish criteria and procedures for use by the Risk Underwriting Committee for determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered in addition to criteria commonly used in the market for determining the insurability of the risk:

1. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and
2. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

(b) The Risk Underwriting Committee shall not be required to review a risk for insurability if an authorized insurer agrees to accept some portion of the risk under an excess of loss contract or reinsurance contract between the insurer and the Association. In accordance with the statute, the acceptance or rejection of a risk by the Underwriting Committee is final and is the private placement of insurance, and is not subject to the provisions of the Administrative Procedures Act, Chapter 120, Florida Statutes.

(22) Policy Forms and Applications.

(a) No policy or policy form shall be used unless it has been approved by the Office. The Association may offer coverage that is more restrictive than the coverage offered by the voluntary market, and may limit its property coverage for a particular risk to cover only a specified structure or structures. It may limit coverage for contents or business interruption and may provide coverage limited to the value of the insured structure. It may offer direct insurance, excess insurance or reinsurance if approved by the Board and the Office of Insurance Regulation.

(b) The application form to be required of insureds shall also be filed and must be approved by the Office prior to its use by the Association. The application form must include, as a minimum, the following:

1. Underwriting information on each building that is to be insured.
2. The name of the prior insurer of the account, if any, along with a copy of the policy or declarations page showing the coverage written for the year prior to application.
3. A copy of any non-renewal or cancellation notice issued by the prior insurer.

4. A certification from the agent that a good-faith effort has been made to find coverage and that the coverage is not available in the private market, including an itemization of other carriers to which the risk was submitted.

(23) Underwriting Rules. Underwriting Rules shall be filed and shall not be used until approved by the Office of Insurance Regulation. The Underwriting Rules shall include a requirement that the application for coverage be submitted to the Market Assistance Plan prior to coverage by the Association. A waiting period of a minimum of ten days shall be required as an underwriting requirement to afford the voluntary market a reasonable opportunity to underwrite and take the risk. In an emergency, the waiting period may be waived upon terms and conditions established in the underwriting rules of the Association.

(24) Rates.

(a) The Association shall establish a rating plan to be filed with and approved by the Office in advance of implementation. Rates shall be actuarially sound and consistent with the applicable standards of Sections 627.062 and 627.051(5), Florida Statutes. The Association may have multiple programs for direct insurance, excess insurance, and reinsurance business, and may establish a separate rating plan for each program. The rating plan shall include the following:

1. An appropriate rate level or levels for risks with loss experience equal to or better than that contemplated by the expected loss ratio in the filing.

2. An appropriate rate level or levels for risks with loss experience worse than that contemplated by the expected loss ratio in the filing.

(25) Deductibles. The Association may establish in its rating plan(s) applicable deductibles as may be necessary to meet the needs of the insureds and to protect the interests of the Association. A deductible of 5% of the first one million dollars of coverage shall apply for the initial policies written by the Association. If the Board determines that a higher or lower deductible amount is needed, the Board may approve different deductibles for each of its programs, file an amended rating plan with the Office, and upon Office approval, offer policies with the new approved deductible amount.

(26) Policy Limits. The Board may establish reasonable limits on available amounts of insurance. Initial policies issued by the Association shall have limits not exceeding one million dollars. If the Board determines that higher or lower limits are needed, the Board may adopt different limits, and file an amended rating plan and policy form with the Office. Upon Office approval, the Association may offer policies with the new approved limits.

(27) Commissions. The commissions payable to producers shall be determined by the Board and set forth in the Association's rating plan, but shall be less than the typical

commissions earned for the sale or placement of risk with a private insurance company, and shall not reward an agent for placing a higher volume of risk with the Association.

(28) Policy Cancellations and Renewals.

(a) Unless otherwise required by law, the Board may establish procedures for the cancellation of policies for nonpayment of premium, misrepresentation of material fact, or failure to comply with risk management programs or other underwriting criteria. Policies may also be cancelled or nonrenewed if there has been a substantial and material change in the nature of the risk that renders it uninsurable or otherwise ineligible for coverage by the Association. Return premiums shall be on a pro rata basis unless determined otherwise by the Board and included in the rating plan.

(b) Renewals may be offered, but each risk shall apply for renewal prior to the expiration of the policy period and shall include with its application for renewal such information as the Association may reasonably require to confirm that the risk remains eligible for coverage.

(29) Risk Management Programs. The Board may establish Risk Management Programs and require compliance with such programs as a condition of coverage at policy inception and as a condition of renewal. The Risk Management Programs may require reasonable efforts to mitigate against the risk of loss from Hurricanes, including the installation of shutters, tied-down roofing materials, and other devices designed to prevent unnecessary losses from the peril of wind. The Risk Management Programs shall be included in the Association's underwriting rules subject to approval by the Office.

(30) Amendments to this Plan of Operation of the Association. The Board of Governors may adopt amendments to this plan of operation to be submitted for review to the Office. The Office will review the amendments and may place the proposed plan amendments on the calendar for a meeting of the Financial Services Commission for approval. Plan amendments shall not be effective until approved by the Financial Services Commission.

(31) Deactivation of the Joint Underwriting Association.

(a) If, at any time, the Financial Services Commission determines that the purposes of the Association have been served or that the Association is no longer necessary or advisable, the Financial Services Commission may deactivate the Association. Such deactivation plan shall provide that upon deactivation, the assets of the Association shall be applied first to pay all debts, claims, liabilities and obligation of the Association including the establishment of reasonable reserves for any contingent liabilities or obligations. Any remaining assets shall be paid to the state of Florida and deposited into or for the benefit of the Florida Comprehensive Hurricane Damage Mitigation Program, the Florida Hurricane Catastrophe Fund or such other fund as may be designated by the Financial Services Commission. However, no deactivation



shall take effect as long as the Association has bonds or other financial obligations outstanding unless adequate provision has been made for the payment of the bonds or other financial obligations pursuant to the documents authorizing the issuance of the bonds or other financial obligations.

(b) Deactivation by the Financial Services Commission is the only method for termination of the business of the Association. The Association shall not be subject to the appointment of a receiver pursuant to Chapter 631, Florida Statutes, and no employee, Board member, insured, participating insurer or other person is authorized to file for bankruptcy protection of the Association on a voluntary or involuntary basis.

Specific Authority 120.54(4), 627.351(5) FS. Law Implemented 627.351(5) FS. History—New 8-16-06.

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: August 16, 2006

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## Section V Petitions and Dispositions Regarding Rule Variance or Waiver

### DEPARTMENT OF LEGAL AFFAIRS

The Department of Legal Affairs, Division of Victim Services and Criminal Justice Programs, hereby gives notice that it has received a petition filed on behalf of 7-Eleven, Inc., on August 9, 2006, seeking a waiver or variance from Rule 2A-5.005, F.A.C., with regard to the requirement regarding test photos and remote triggering devices. Comments on this petition should be filed with Division of Victim Services and Criminal Justice Programs, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, within 14 days of publication of this notice.

For a copy of the petition contact: Rick Nuss, Chief, Bureau of Criminal Justice Programs, Department of Legal Affairs, PL-01, The Capitol, Tallahassee, Florida 32399-1050, (850)414-3351.

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### BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

### WATER MANAGEMENT DISTRICTS

The St. Johns River Water Management District hereby gives notice that it received a petition for variance on August 8, 2006 from DiVosta Homes, L.P. Pursuant to Section 120.542, Florida Statutes, DiVosta Homes, LP is seeking a variance from subparagraph 40C-41.063(1)(c)1., F.A.C., and Section 11.1.3 of the Applicant's Handbook: Management and Storage of Surface Waters (February 1, 2005) (A.H.), with respect to Environmental Resource Permit (ERP) Application 4-009-96251-7. The permit applicant is proposing to construct a development project, to be known as Waterstone PUD, Phase II, in Brevard County. Subparagraph 40C-41.063(1)(c)1., F.A.C., and Section 11.1.3., A.H., prohibit the construction, operation, and maintenance of a surface water management system in the Upper St. Johns River Hydrologic Basin that results in an increase in the amount of water being diverted from the Basin to coastal receiving waters. These rules are intended to protect the water resources of the State by limiting discharges of fresh water to estuarine waters and curtailing interbasin diversion. Comments on this petition should be filed with Sandy Bertram, District Clerk, St. Johns River Water Management District, 4049 Reid Street, Palatka, Florida 32177, within 14 days of publication of this notice. The petition has been assigned F.O.R. Number 2006-80. For a copy of the petition or additional information, contact: Veronika Thiebach, Senior Assistant General Counsel, Office of General Counsel, St. Johns River Water Management District, 4049 Reid Street, Palatka, Florida 32177, (386)329-4488.

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The St. Johns River Water Management District (SJRWMD) Governing Board hereby gives notice that on August 8, 2006, it issued a Final Order Granting Variance under Section 120.542, F.S. (SJRWMD FOR# 2006-66), to Garvey Development, LLC (Petitioner). The Petition for Variance was received by SJRWMD on June 1, 2006. Notice of receipt of the petition requesting the variance was published in the F.A.W., Vol. 32, No. 24 on June 16, 2006. No public comment was received. This order provides a temporary variance from subparagraph 40C-41.063(1)(c)1. of the Florida Administrative Code and Section 11.1.3 of the Applicant's Handbook: Management and Storage of Surface Waters (February 1, 2005). These rules provide in pertinent part that a surface water management system may not result in an increase in the amount of water being diverted from the Upper St. Johns River Hydrologic Basin to intercoastal receiving waters. Generally, the Order sets forth the basis of the Governing Board's decision to grant the variance as follows: 1) requiring Petitioner to comply with these rules onsite would create a technological hardship and 2) Petitioner's financial contribution to the C-1 Rediversion Project or an Alternative Rediversion Project will accomplish the purpose of Chapter 373, Florida Statutes to prevent harm to the water resources by facilitating the project's implementation. The C-1 Rediversion Project is a restoration