

Section IV Emergency Rules

DEPARTMENT OF STATE

Division of Elections

RULE TITLE:

Exception for Provisional Ballots-Sequoia

RULE NO.:

1SER06-1

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY AND WELFARE: Pursuant to Section 120.54(4)(b), Florida Statutes, this emergency rule is a rule pertaining to the public health, safety, and welfare as it involves the interpretation and implementation of the requirements of Chapters 97-102 and 105 of the Florida Election Code. This emergency rule is an exception to the recently amended Rule 1S-2.037, F.A.C., relating to provisional ballots, and is necessary to ensure the secrecy of provisional ballots cast by voters in counties using the Sequoia Touch Screen Voting System.

Neither the old version nor the recently amended version of Rule 1S-2.037, F.A.C., relating to procedures and forms for provisional ballots that was adopted on January 9, 2006, by the Florida Department of State/Division of Elections adequately addresses the issue of secrecy of provisional ballots cast on Sequoia Touch Screen Voting Systems. On August 12, 2005, the Department had initiated proposed rule-making for Rule 1S-2.037, F.A.C., to reflect changes in Chapters 2005-277 and 2005-278, Laws of Florida. The amended rule included two major parts. The first part of the amended rule dealt with the expanded opportunities to vote a provisional ballot and the statutory right of provisional ballot voters to present written evidence within a specified time period to their respective supervisor of elections prior to a review and determination by the canvassing board of whether to count the provisional ballot. The second part of the amended rule incorporated three new forms for provisional ballot certificates and affirmations. Forms DS DE 49 OS/TS, entitled "Optical Scan, Provisional Ballot Voter's Certificate and Affirmation," DS DE 49 TS, entitled "Touch Screen, Provisional Ballot Voter's Certificate and Affirmation," and DS DE 49 OS, entitled "Optical Scan, Provisional Ballot Voter's Certificate and Affirmation," correspond to the types of voting system(s) used in the respective county jurisdiction. The first form is a combined form applicable for use by counties with optical scan and touch screen voting systems. Each of the forms also includes instructions and procedures for processing provisional ballots by the elections official, the supervisor of elections and the canvassing board.

Prior to the Division's filing of Rule 1S-2.037, F.A.C., for adoption, the Bureau of Voting Systems Certification identified a significant obstacle with the application of the proposed rule and the forms during the Bureau's testing of the Sequoia Voting System for compliance with the disability accessibility

requirements of Title III of the Help America Vote Act and Section 101.56062, Florida Statutes. The proposed rule and incorporated forms as applied to the Sequoia Touch Screen Voting System can not ensure the secrecy of the provisional ballot as required under state and federal law. If the provisional ballot procedures for touch screen voting systems and form DS DE 49 TS, entitled "Touch Screen, Provisional Ballot Voter's Certificate and Affirmation," or form DS DE 49 OT/TS, entitled "Optical Scan/Touch Screen, Provisional Ballot Voter's Certificate and Affirmation" are used for the provisional ballot voter using the Sequoia Touch Screen Voting System, the provisional ballot identification number included on the certificate and affirmation will reveal a link between the identity of the voter and the vote cast when ballot image reports are generated. This problem was confirmed by the vendor for the Sequoia Touch Screen Voting System.

The timing of the discovery occurred at a point in which the Department could not toll Rule 1S-2.037, F.A.C., for adoption because of the administrative rulemaking deadlines. The Department filed the revised Rule 1S-2.037, F.A.C., for adoption on January 9, 2007, which becomes effective on January 29, 2006, with the intent to re-initiate rulemaking to address permanently the particular circumstance associated with provisional ballots under the Sequoia Touch Screen Voting System. In the interim, the Department has learned that at least one county, Pinellas County that uses the Sequoia Touch Screen Voting System, is scheduled to hold municipal elections in March 2006. At least three other counties (Indian River, Palm Beach and Hillsborough) are potentially at risk if an election were to be scheduled within the next two to three months. There is insufficient time to amend Rule 1S-2.037, F.A.C., prior to Pinellas County's municipal election. This emergency rule is necessary to address the problem for upcoming election pending adoption of the text permanently into Rule 1S-2.037, F.A.C.

REASONS FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The Division of Elections is aware of the rulemaking procedures prescribed by Section 120.54, Florida Statutes. That process requires advance notice to the general public of intended rules and the opportunity to submit comments on the intended rule, prior to the agency's adoption of the rule. The time period for general rulemaking takes at least 60 days and will prevent the timely amendment and adoption of Rule 1S-2.037, F.A.C., needed prior to the municipal election in Pinellas County and in any other election that may be scheduled within the next 2-3 months in a county using the Sequoia Touch Screen Voting System.

SUMMARY OF THE RULE: The emergency rule is needed to provide procedures and forms to ensure the secrecy of provisional ballots for voters in counties that use Sequoia

Touch Screen Voting Systems. The Department of State will be initiating rulemaking to amend Rule 1S-2.037, F.A.C., to incorporate the text of the emergency rule permanently.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Maria I. Matthews, Assistant General Counsel, Division of Elections, Department of State, R.A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida 32399, (850)245-6536

THE FULL TEXT OF THE EMERGENCY RULE IS:

1SER06-1 Exception for Provisional Ballots-Sequoia Touch Screen Voting System.

(1) In order to ensure the secrecy of the ballot of each provisional ballot voter, the following forms and procedures must be used and followed in all counties using the Sequoia Touch Screen Voting System:

(a) Form DS DE 49 Sequoia, entitled "Sequoia Touch Screen, Provisional Ballot Voter's Certificate and Affirmation," (eff. 01/06) shall be used as the provisional ballot envelope form, and form DS DE 49 Sequoia-A, entitled "Provisional Ballot Identification Number Form," (eff. 01/06) shall be used to write the provisional ballot voter's identification number, in reference to the procedures in paragraphs (b) and (c). These forms are incorporated by reference and are available from the Division of Elections website at: <http://election.dos.state.fl.us>, or by contacting the Division of Elections at (850)245-6200.

(b) Procedures at the polls:

1. Once a determination is made that a voter needs to vote a provisional ballot, the voter is provided with the provisional ballot envelope form DS DE 49 Sequoia.

2. The voter fills out the Provisional Ballot Voter's Certificate and Affirmation using DS DE 49 Sequoia and provides it to the election official to witness.

3. The election official witnesses the voter's signature and fills out the information on the back side of the envelope indicating the reason the voter is voting a provisional ballot.

4. The election official activates the voter card and writes the provisional ballot number from the card activator on a separate form using DS DE 49 Sequoia-A.

5. The voter verifies that the provisional ballot identification number on the form matches the ballot number from the card activator display.

6. The voter places the form with the ballot identification number in the Provisional Ballot envelope and seals the envelope.

7. The voter proceeds to the touch screen voting system and votes his or her provisional ballot.

8. At the close of the polls, all completed provisional ballot envelopes are returned to the supervisor of elections.

(c) Procedures during the canvassing process:

1. The canvassing board determines the eligibility of each provisional voter.

2. For each provisional voter that is determined to be eligible, the provisional ballot envelope shall be opened and the provisional ballot number shall be separated from the envelope containing the voter's name to ensure that the voter's name and provisional ballot number cannot be connected.

3. All ballots connected to the provisional ballot numbers for eligible voters shall be tabulated according to the procedures for tabulating ballots provided by the manufacturer.

4. For each provisional voter that is determined to be ineligible, the provisional ballot envelope shall not be opened and the Provisional Ballot Identification Number shall remain sealed in the envelope.

(2) Provisional ballot procedures on election day and during the early voting period must otherwise meet the requirements of Rule 1S-2.037, Florida Administrative Code.

(3) The effective date of this emergency rule is January 29, 2006.

Specific Authority 20.10(3), 97.012(1)(2), 101.048 FS. Law Implemented 97.053(6), 101.043, 101.048, 101.111 FS. History--New 1-29-06.

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

EFFECTIVE DATE: January 29, 2006

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Board of Trustees of the Internal Improvement Trust Fund are published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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DEPARTMENT OF FINANCIAL SERVICES

Division of Insurance Agents and Agency Services

RULE TITLE: RULE NO.:

Public Adjusting of Insurance Claims

from Hurricane Wilma

69BER06-02

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: The Department of Financial Services hereby states that the following circumstances constitute an immediate danger to the public health, safety, and welfare: This emergency rule is necessitated by the property damage resulting in Florida from Hurricane Wilma, Florida's eighth hurricane in 15 months, which came ashore in Florida at 6:30 a.m. ET on October 24, 2005, as a category 3 hurricane near

Cape Romano, 22 miles south of Naples. Hurricane Wilma came ashore with sustained winds up to 125 miles per hour. It remained a category 2 hurricane as it traveled across the entire southern peninsula of the state with winds of up to 100 miles per hour. The Governor of Florida declared a state of emergency (Executive Order # 05-219). The President of the United States signed a disaster declaration to provide federal disaster assistance to the damaged areas.

According to information reported to the Office of Insurance Regulation by insurance companies, 836,408 insurance claims were filed by Florida residents as a result of Hurricane Wilma. Due to the huge number of claims, over half of these claims have not yet been settled by insurance companies and 345,297 claims have not even had damages assessed by the insurer's claims adjuster. These figures show that the emergency created by Hurricane Wilma continues to impact a large number of Floridians.

Excessive public adjusting fees are a source of injury to the public health, safety, and welfare by substantially impairing the financial ability of insureds to effectuate repairs to damaged property in a timely fashion, to commence or complete repairs, or to make proper and adequate repairs meeting building code requirements. In order for complete rebuilding to occur, insurance proceeds cannot be eroded by unreasonable public adjuster fees. As a result, there is a need to limit the fees imposed by public adjusters to a reasonable level. This rule limits fees charged by public adjusters to 10 per cent of the amount of the insurance policy proceeds paid to the policyholder.

The rule also contains provisions relating to required contract terms and other ethical requirements. These provisions are reasonable and necessary based on the Department's experience with public adjuster abuses after prior hurricanes. The Legislature recognized, in Section 626.8698, Florida Statutes, that the interest of the public demands that public adjusters be prohibited from "soliciting or otherwise taking advantage of a person who is vulnerable, emotional or otherwise upset as a result of trauma, accident or similar occurrence..." Hurricane Wilma has placed a great number of people in a state of vulnerability, including many Floridians who live and work in areas previously impacted by Hurricane Rita, Hurricane Katrina, and Hurricane Dennis in the three months prior to landfall of Hurricane Wilma, as well as the four hurricanes which struck the state in 2004. The emotional stress of claimants may lead them to make imprudent decisions in the context of contracting with public adjusters.

In consideration of the emergency conditions that continue to exist, and given the Department's responsibility to protect the public interest, including insureds, and implement the Insurance Code, an emergency rule is necessary.

REASONS FOR CONCLUDING THAT THE PROCEDURE USED IS FAIR UNDER THE CIRCUMSTANCES: The Department of Financial Services believes that adopting an

emergency rule is the fairest method to protect the public because the nature of the destruction caused by Hurricane Wilma requires an immediate response. The conditions from Hurricane Wilma will require the Department to exercise its authority to provide protection to consumers from unethical conduct of certain public adjusters. The provisions of this rule provide needed guidance to public adjusters. A Department bulletin addressed to all licensed public insurance adjusters would reach them, but would not be legally binding. In addition, the Department has initiated permanent rulemaking for some of the provisions of this and previous emergency rules for public adjusters in the aftermath of hurricanes. A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on October 21, 2005. The Department plans to publish a Notice of Proposed Rulemaking in the February 9, 2006, issue of the Florida Administrative Weekly.

SUMMARY OF THE RULE: This emergency rule adopts emergency ethical standards to be applied to claims resulting from Hurricane Wilma. The rule limits public adjuster commissions to a maximum of 10% of insurance proceeds regardless of whether the risk is residential or commercial. The rule also prohibits public adjusters from requiring, demanding, or accepting payments prior to settlement of a claim. The rule requires certain standards for public adjuster contracts to reduce risk of deception. The rule establishes ethical standards to avoid incompetence, conflict of interest, or deception. The rule also establishes a 14-day rescission period for public adjuster contracts. Additionally the rule prohibits public adjusters from entering into a contract to adjust a residential property claim that has been declared a total loss, unless the public adjuster services can reasonably be expected to benefit the claimant.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Barry Lanier, Chief, Bureau of Investigation, Division of Agent and Agency Services, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0333, (850)413-5600

THE FULL TEXT OF THE EMERGENCY RULE IS:

69BER06-02 Public Adjusting of Insurance Claims from Hurricane Wilma.

(1) General provisions.

(a) This emergency rule sets forth specific limits on public adjuster commissions and provides other ethical standards to protect insureds under stress due to loss.

(b) The provisions of this emergency rule are intended to supplement the requirements for conduct of public adjusting and ethical requirements placed on public adjusting as set forth in Rules 69B-220.051 and 69B-220.201, Florida Administrative Code, as promulgated pursuant to applicable law. These provisions are intended to provide needed guidance

to public adjusters and assure ethical public adjusting claims practices under the specific circumstances caused by the impact of Hurricane Wilma.

(c) This rule applies only to losses occurring as a result of Hurricane Wilma.

(d) This rule applies for 90 days from the date filed with the Secretary of State, Bureau of Administrative Code.

(e) The provisions of this rule are ethical requirements binding upon public adjusters, in addition to those requirements established in Rule Chapter 69B-220, Florida Administrative Code.

(2) Definitions.

(a) "Public Adjuster" is defined for purposes of this rule as defined in Section 626.854, Florida Statutes.

(b) "Public Adjusting" is the activity described in Section 626.854, Florida Statutes.

(3) Limits on Commissions.

(a) As to any one insured or claimant, no public adjuster shall charge, agree to, or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than ten percent of any insurance settlement or proceeds.

(b) No public adjuster shall require, demand, or accept any fee, retainer, compensation, deposit, or other thing of value, prior to settlement of the claim.

(4) Required Contract Terms. Public adjusters shall ensure that all contracts for their services are in writing, and contain the following terms:

(a) The contract shall legibly state the full name as specified in Department records of the public adjuster signing the contract.

(b) The contract shall be signed by the public adjuster who solicited the contract. If the public adjuster is licensed by the Department as an emergency public adjuster, the contract shall show the public adjuster's:

1. Permanent home address and home phone number;
2. Permanent home state business address and phone number; and
3. Florida adjuster license number.

(c) The contract shall show:

1. The insured's full name and street address;
2. Address of loss;
3. A brief description of the loss;
4. The insured's insurance company name and policy number, if available.

(d) The contract shall show the date the contract with the public adjuster was actually signed by the insured or claimant.

(e)1. The full compensation to the public adjuster shall be stated in the contract.

2. If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified.

3. Any costs to be reimbursed to the public adjuster out of the proceeds shall be specified by type, with dollar estimates set forth in the contract.

4. Compensation provisions in a public adjusting contract shall not be redacted in any copy of the contract provided to an insurer. Such a redaction shall constitute an omission of material fact in violation of Section 626.9541(1)(e)2., Florida Statutes.

(5) General Ethical Requirements. Public Adjusters shall adhere to the following requirements:

(a) An adjuster shall not undertake the adjustment of any claim concerning which the adjuster is not currently competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the adjuster's current expertise.

(b)1. No person shall, as a public adjuster, represent any person or entity whose claim the adjuster has previously adjusted while acting as an adjuster representing any insurer or independent adjusting firm.

2. No person shall, as a company or independent adjuster, represent him- or herself or any insurer or independent adjusting firm against any person or entity that the adjuster previously represented as a public adjuster.

(c)1. A public adjuster shall not represent or imply to any client or potential client that insurers, company adjusters, or independent adjusters routinely attempt to, or do in fact, deprive claimants of their full rights under an insurance policy.

2. No insurer, independent adjuster, or company adjuster shall represent or imply to any claimant that public adjusters are unscrupulous, or that engaging a public adjuster will delay or have other adverse effect upon the settlement of a claim.

(d)1. No public adjuster, while so licensed in Florida, may represent or act as a company adjuster, independent adjuster, or general lines agent.

2. No independent adjuster or company adjuster, while so licensed in Florida, may represent or act as a public adjuster.

(e)1. A public adjuster's contract with a client shall be revocable or cancelable by the insured or claimant, without penalty or obligation, for at least 14 business days after the contract is entered into. For the purposes of this rule, business days means Monday through Friday, except for state or national holidays.

2. The public adjuster shall disclose to the insured that the insured has the right to cancel with prompt notice within the revocation period.

3. If the insured elects to cancel the contract, prompt notice shall be provided to the adjuster.

4. Nothing in the provision shall be construed to prevent an insured from pursuing any civil remedy after the 14-day cancellation period.

(f) A public adjuster shall not enter into a contract or accept a power of attorney which vests in the public adjuster the effective authority to choose the persons who shall perform repair work.

(g) A public adjuster shall ensure that all contracts for the public adjuster's services are in writing and set forth all terms and conditions of the engagement.

(6) Total Loss Claims. No public adjuster shall knowingly enter into a contract to adjust a residential property claim subsequent to an insurer declaring the property a total loss, unless the services to be provided by the public adjuster can reasonably be expected to result in the claimant obtaining an insurance settlement, net of the adjuster's compensation, in excess of what the insured claimant would have obtained without the services of the public adjuster.

Specific Authority 120.54(4), 624.308, 626.878, 626.9611 FS. Law Implemented 624.307(1), 624.307, 626.611, 626.621, 626.865(2), 626.8698, 626.878, 626.9541(1)(e),(i) FS. History—New 2-1-06.

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: February 1, 2006

Section V Petitions and Dispositions Regarding Rule Variance or Waiver

DEPARTMENT OF LAW ENFORCEMENT

Notice is hereby given that the Officer Professionalism Program, Florida Department of Law Enforcement has received from Shawn M. Jones on January 27, 2006, a petition for Waiver of Rules 11B-27.002, 11B-30.006, 11B-30.0062, 11B-30.013 and 28-104.002, F.A.C., pursuant to Section 120.542, F.S. Petitioner has requested that the Department waive the requirement that an officer retake basic recruit training and the State Officer Certification Examination if the officer is not employed as an officer within four years of beginning basic recruit training.

Comments on this Petition should be filed with: Office of General Counsel, Florida Department of Law Enforcement, P. O. Box 1489, Tallahassee, Florida 32302, Attention: Assistant General Counsel, Grace A. Jaye.

A copy of the Petition may be obtained by contacting: Assistant General Counsel, Grace A. Jaye at the above address, or by calling (850)410-7676.

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

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WATER MANAGEMENT DISTRICTS

NOTICE IS HEREBY GIVEN that on January 19, 2006, South Florida Water Management District (District) received a Petition for waiver from Port Mayaca Yacht Club, Application No. 06-0117-5, for utilization of Works or Lands of the District known as the L-65 Canal, Martin County for the proposed construction of a bridge crossing the L-65 Canal, Section 32, Township 37 South, Range 40 East. The petition seeks relief from subsections 40E-6.011(4) and (6) and paragraph 40E-6.221(2)(j), F.A.C., which govern the minimum low member elevation of pile supported facilities within Works or Lands of the District.

A copy of the petition may be obtained from: Kathie Ruff, (561)682-6320, e-mail: kruff@sfwmd.gov.

The District will accept comments concerning the petition for 14 days from the date of publication of this notice. To be considered, comments must be received by the end of business on the 14th day at: Attn: Kathie Ruff, Office of Counsel, South Florida Water Management District, 3301 Gun Club Road, MSC 1410, West Palm Beach, FL 33406.

AGENCY FOR HEALTH ADMINISTRATION

Notice is hereby given that an Order has been issued in the matter of In Re: Petition for Variance or Waiver for subsection 59A-10.032(15), F.A.C. In Relation to the Definition of Health Care Professional, which petition was filed by Petitioner Duane Ratliff on October 24, 2005. Notice of the filing of this petition was first published in Florida Administrative Law Weekly on November 23, 2005, and interested persons were invited to comment. Under the Rule, Emergency Medical Technicians are considered Health Care Professionals for purposes of eligibility to pursue an abbreviated application process for licensure as a Healthcare Risk Manager. Paramedics, who must demonstrate greater competency and more advanced training than Emergency Medical Technicians, are not considered Health Care Professionals under the Rule. Thus Petitioner, a certified Paramedic, under the Rule as written, was unable to pursue the same application process as a lesser skilled and trained EMT. On January 12, 2006, the Secretary of the Agency signed an Order GRANTING the