

Section I

Notices of Development of Proposed Rules and Negotiated Rulemaking

DEPARTMENT OF LEGAL AFFAIRS

Florida Elections Commission

RULE NO.: 2B-1.002
 RULE TITLE: Definitions

PURPOSE AND EFFECT: The Commission proposes the development of rule amendments to define terms which will be utilized for determining whether the imposition of a civil penalty is appropriate for a violation of Chapter 104, F.S.

SUBJECT AREA TO BE ADDRESSED: Definition of terms utilized for the determination of civil penalties.

SPECIFIC AUTHORITY: 106.26 FS.

LAW IMPLEMENTED: 106.25(3) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Barbara Linthicum, Executive Director, Florida Elections Commission, PL-01, The Capitol, Tallahassee, Florida 32399-1050

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

2B-1.002 Definitions.

For purposes of imposing a civil penalty for violating Chapter 104, F.S., the following definitions shall apply:

(1) A person acts "willful" or "willfully" when he or she showed reckless disregard for whether his or her conduct was prohibited or required by Chapter 104, F.S.

(2) "Knew" means that the person was aware of a provision of Chapter 104, F.S., understood the meaning of the provision, and then performed an act prohibited by the provision or failed to perform an act required by the provision.

(3) "Reckless disregard" means that the person disregarded the requirements of Chapter 104, F.S., or was plainly indifferent to its requirements, by failing to make any reasonable effort to determine whether his or her acts were prohibited by Chapter 104, F.S., or whether he or she failed to perform an act required by Chapter 104, F.S.

Specific Authority 106.26 FS. Law Implemented 106.25(3) FS. History--New.

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 CORRECTIONS

RULE NO.: 33-208.101
 RULE TITLE: Employee Grooming, Uniform and Clothing Requirements

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to amend the dress code for health care employees and to update Form DC2-816, Individual Clothing Record, to include additional clothing articles.

SUBJECT AREA TO BE ADDRESSED: Employee uniform and clothing requirements.

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 20.315, 944.09 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Dorothy M. Ridgway, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-208.101 Employee Grooming, Uniform and Clothing Requirements.

(1) though (5) No change.

(6) The following provisions shall apply to health services employees.

(a) All health services staff providing direct care to inmates at an institution shall wear the department issued ID card in a visible manner that will identify the individual at all times while on duty and a nameplate engraved with the employee's last name, first name initial, and initials of licensure or certification. ~~The nameplate will be issued by the department.~~

(b) Physicians, clinical associates, dentists, dental assistants, dental hygienists, nurse supervisors, nurse consultants, executive nursing directors and pharmacists will have no prescribed uniform. ~~White smocks, clinical coats and surgical gowns as required in the performance of duty will be furnished by the department.~~

(c) Nurses, correctional medical technicians certified, health support workers, unit treatment rehabilitation specialists, ward clerks, radiology technicians and medical technologists shall be required to wear the dark colored scrub suits provided by the department or the standard white nurse uniform. The nurse scrubs or uniform must be provided by the employee. No denim scrubs or uniforms will be permitted.

~~(d) Correctional medical technicians certified, correctional medical technicians, health support workers and medical technologists shall wear the dark colored scrub suit provided by the department.~~

~~(d)(e)~~ Employees in the position of ~~senior~~ registered professional nurse, LPN, correctional medical technician, correctional medical technician certified, medical technologist, radiology technician, UTR and “ward clerk” must wear shoes such as closed toe white leather or leather-like tennis shoes.

~~(e)(f)~~ The following shall apply to health services staff whose duties require providing direct care to inmates in an institution, including physicians, pharmacists, dentists, clinical associates, registered nurses, LPNs, ~~correctional medical technicians~~, correctional medical technicians certified, medical technologists, health support workers, UTR’s and “ward clerks”.

1. Excessive jewelry shall not be worn with the uniform. ~~No necklaces, chains or medallions shall be worn around the neck such that they are visible while in uniform.~~ Jewelry that could be used to disable an employee, ~~such as hair pins,~~ will not be worn. No bulky or ornate jewelry will be worn. Bracelets or earrings are prohibited for male staff. Female staff shall be allowed to wear earrings; however, only one pair of post or clip-on earrings will be worn at a time and will be worn on earlobes only. Earrings for female staff will constitute the only body piercing ornaments allowed. For safety purposes, earrings shall not be hooped or dangling. ~~Only post or clip on will be worn on earlobes only.~~

2. Fingernails will be neatly trimmed and clean. Fingernails shall not extend more than 1/4 inch past the end of the finger. Artificial fingernails or extenders will not be worn when having direct contact with high risk inmates, i.e., in a licensed hospital facility, intensive care units, operating rooms, or dialysis units. Polish, if worn, shall be clear or solid in color. Hair shall be maintained in a manner consistent with infection control practices and safety considerations.

(7) No change.

(8) Forms. The following forms used in implementing the provisions of this rule are hereby incorporated by reference:

(a) Individual Clothing Record, DC2-816, effective 12-18-00.

(b) Authorization for Uniform Replacement, DC2-817, effective 12-18-00.

A copy of these forms may be obtained from the Forms Control Administrator, Office of Research, Planning and Support Services, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09 FS. History—New 2-27-85, Amended 6-19-85, Formerly 33-4.07, Amended 3-6-88, 8-15-89, 2-12-91, 10-13-91, 4-19-98, 12-7-98, Formerly 33-4.007, Amended 10-5-99, 3-21-00, 12-18-00, 4-30-02, 2-20-03, 6-26-03, 10-27-03, 12-28-03, 12-12-04, _____.

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE NO.: 40E-4.091
 RULE TITLE: Publications, Rules and Interagency Agreements Incorporated by Reference

PURPOSE AND EFFECT: To include language which clarifies that the Uniform Mitigation Assessment Method (UMAM) found in Rule 62-345, F.A.C., is applicable to all applications received on or after February 2, 2004.

SUBJECT AREA TO BE ADDRESSED: Section 4.3.2 Mitigation Ratio Guidelines, of the Basis of Review for Environmental Resource Permit Applications Within The South Florida Water Management District.

SPECIFIC AUTHORITY: 373.044, 373.113, 373.171, 373.413 FS.

LAW IMPLEMENTED: 373.413, 373.4135, 373.414, 373.4142, 373.416, 373.418, 373.421, 373.426 FS.

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

Although Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the proceeding is made, including the testimony and evidence upon which any appeal is to be based. Persons with disabilities or handicaps who need assistance may contact: South Florida Water Management District Clerk’s Office, (561)682-2087 at least two business days in advance to make appropriate arrangements.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Anita Bain, Division Director, Natural Resource Management Division, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1(800)432-2045, extension 6866 or (561)682-6866 (internet: abain@sfwmd.gov, or for procedural issues, Jan Sluth, Paralegal, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, 1(800)432-2045, extension 6299, or (561)682-6299, email: jsluth@sfwmd.gov.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

40E-4.091 Publications, Rules and Interagency Agreements Incorporated by Reference.

(1) The following publications, rules and interagency agreements are incorporated by reference into this chapter, Chapters 40E-40, 40E-41 and 40E-400, F.A.C.:

(a) "Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District – _____ 2-12-06".

(b) through (k) No change.

(2) No change.

Specific Authority 373.044, 373.113, 373.171, 373.413 FS. Law Implemented 373.413, 373.4135, 373.414, 373.4142, 373.416, 373.418, 373.421, 373.426 FS. History–New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.035(1), Amended 5-1-86, 7-1-86, 3-24-87, 4-14-87, 4-21-88, 11-21-89, 11-15-92, 1-23-94, 4-20-94, 10-3-95, 1-7-97, 12-3-98, 5-28-00, 8-16-00, 1-17-01, 7-19-01, 6-26-02, 6-26-02, 4-6-03, 4-14-03, 9-16-03, 12-7-04, 2-23-06, _____.

(The following represents proposed changes to the document entitled "Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District – 2-12-06" incorporated by reference in Rule 40E-4.091, F.A.C.)

4.3.2 Mitigation Ratio Guidelines

a. For applications received on or after February 2, 2004, except as provided in Rule 62-345, F.A.C., Sections 4.3.2 – 4.3.2.4 are superseded by Rule 62-345, F.A.C.

b. Subsections 4.3.2 – 4.3.2.4 establish ratios for the acreage of mitigation required compared to the acreage which is adversely impacted by regulated activities. Ranges of ratios are provided below for certain specific types of mitigation, including creation, restoration, enhancement and preservation. Mitigation ratios for wetlands which have a 50% or greater coverage of melaleuca (*Melaleuca quinquenervia*), will be determined pursuant to subsection 4.3.2.4. and other provisions of this section. The difference between the ranges of ratios provided for mitigation types is based on the degree of improvement in ecological value expected from each type. Creation and restoration are assigned the lowest range of ratios as these activities, when successfully conducted, add new wetlands or other surface waters which provide the same or similar functions as the area being adversely impacted. The range of ratios established for enhancement is higher than that for creation and restoration, as the area being enhanced currently provides a degree of the desired functions, and this type of mitigation serves to increase, rather than create, those functions. Preservation differs from the other types of mitigation in that it does not serve to improve the existing ecological value of an area in the short term. However, preservation does provide benefits as it can

ensure that the values of the preserved area are protected and maintained in the long term, particularly when these values are not fully protected under existing regulatory programs. Therefore, the range of ratios established for preservation is higher than those for other types of mitigation. These ratios are provided as guidelines for preliminary planning purposes only. The actual ratio needed to offset adverse impacts may be higher or lower based on a consideration of the factors listed in subsections 4.3.2.1 through 4.3.2.4. For example, in instances where the proposed system results in only a small loss of ecological value in the impacted area, such as cases involving impacts to areas of low ecological value or cases where the proposed system results in a small reduction of ecological value of the impacted area, then the actual mitigation ratio would normally be in the lower end of or below the range. For other types of mitigation, ratios will be determined based upon the reduction in quality and relative value of the functions of the areas adversely impacted as compared to the expected improvement in quality and value of the functions of the mitigation area.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Construction Industry Licensing Board

RULE NO.: 61G4-12.017
 RULE TITLE: Reinstatement and Relicensure
 PURPOSE AND EFFECT: The Board proposes to review the existing language in this rule to determine whether changes are necessary.
 SUBJECT AREA TO BE ADDRESSED: Reinstatement and Relicensure.
 SPECIFIC AUTHORITY: 489.108 FS.
 LAW IMPLEMENTED: 489.111, 489.113, 489.115, 489.117, 489.129 FS.
 IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.
 THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: G.W. Harrell, Executive Director, Construction Industry Licensing Board, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-0750
 THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Construction Industry Licensing Board

RULE NO.: 61G4-15.0021
 RULE TITLE: Certification and Registration of Business Organizations

PURPOSE AND EFFECT: The Board proposes to review the existing Financially Responsible Bond amount.

SUBJECT AREA TO BE ADDRESSED: Certification and Registration of Business Organizations.

SPECIFIC AUTHORITY: 489.108 FS.

LAW IMPLEMENTED: 455.213, 489.105, 489.107, 489.115, 489.119, 489.1195, 489.143 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: G.W. Harrell, Executive Director, Construction Industry Licensing Board, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-0750

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

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Professional Surveyors and Mappers

RULE NO.: 61G17-2.001
 RULE TITLE: Grounds for Discipline

PURPOSE AND EFFECT: The Florida Board of Professional Surveyors and Mappers is updating Rule 61G17-2.001, F.A.C., by deleting a citation to a repealed Rule.

SUBJECT AREA TO BE ADDRESSED: Grounds for Discipline.

SPECIFIC AUTHORITY: 455.227, 472.008, 472.033(2) FS.

LAW IMPLEMENTED: 455.227, 472.008, 472.015, 472.025, 472.033(1)(f), (g), (h), (2), 472.027 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Rick Morrison, Executive Director, Board of Professional Surveyors and Mappers, 1940 North Monroe Street, Tallahassee, Florida 32399-0767

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

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Professional Surveyors and Mappers

RULE NO.: 61G17-2.0015
 RULE TITLE: Disciplinary Guidelines

PURPOSE AND EFFECT: The Florida Board of Professional Surveyors and Mappers is updating and revising its disciplinary guidelines for violations of subsections 472.033(1)(i), 472.033(1)(h), and 455.227(1)(k), F.S.

SUBJECT AREA TO BE ADDRESSED: Disciplinary Guidelines.

SPECIFIC AUTHORITY: 472.008, 472.033 FS.

LAW IMPLEMENTED: 472.033 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Rick Morrison, Executive Director, Board of Professional Surveyors and Mappers, 1940 North Monroe Street, Tallahassee, Florida 32399-0767

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

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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DEPARTMENT OF HEALTH

Board of Medicine

RULE NO.: 64B8-9.003
 RULE TITLE: Standards for Adequacy of Medical Records

PURPOSE AND EFFECT: The proposed rule amendment is intended to remove language with regard to medical records based upon a recent appellate court ruling.

SUBJECT AREA TO BE ADDRESSED: Removal of language with regard to medical records.

SPECIFIC AUTHORITY: 458.309, 458.331(1)(t), (v) FS.

LAW IMPLEMENTED: 456.061, 458.331(1)(g), (h), (k), (m), (t), (v), (gg), (hh) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Larry McPherson, Executive Director, Board of Medicine/MQA, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

64B8-9.003 Standards for Adequacy of Medical Records.

(1) No change.

(2) A licensed physician shall maintain patient medical records in English, in a legible manner and with sufficient detail to clearly demonstrate why the course of treatment was undertaken or why an apparently indicated course of treatment was not undertaken.

(3) through (5) No change.

Specific Authority 458.309, 458.331(1)(t), (v) FS. Law Implemented 456.061, 458.331(1)(g), (h), (k), (m), (t), (v), (gg), (hh) FS. History–New 1-1-92, Formerly 21M-27.003, Amended 1-12-94, Formerly 61F6-27.003, Amended 9-3-95, Formerly 59R-9.003, Amended 8-20-02, _____.

DEPARTMENT OF HEALTH

Board of Speech-Language Pathology and Audiology

RULE NO.: RULE TITLE:

64B20-9.006 Recordkeeping and Retention

PURPOSE AND EFFECT: The Board proposes the development of a rule to address the appropriate standards for Recordkeeping and Retention.

SUBJECT AREA TO BE ADDRESSED: Recordkeeping and Retention.

SPECIFIC AUTHORITY: 468.1135(4), 468.1225(1), (2), (3), (4), (5), (6), (7), 468.1245(1), (2), (3), 468.1246(1) FS.

LAW IMPLEMENTED: 468.1135, 468.1225, 468.1245, 468.1246 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Pamela King, Executive Director, Board of Speech-Language Pathology and Audiology, MQA, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3258

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

64B20-9.006 Recordkeeping and Retention.

(1) Speech-Language Pathologists. Each licensee who provides speech-language pathology services, as set forth in Section 468.1125(7), F.S., to individuals or groups, shall create and maintain, for a period of 4 years, records and documentation of:

(a) Each individual to whom services were provided;

(b) If a group, the names of the individuals in the group to whom services were provided;

(c) A list of the specific services provided; and

(d) The date that the specific services were provided.

(2) Audiologists.

(a) Each licensee who provides audiology services, as set forth in Section 468.1125(6), F.S., other than the fitting or selling of a hearing aid, to individuals or groups, shall create and maintain, for a period of 4 years, records and documentation of:

1. Each individual to whom services were provided;

2. If a group, the names of the individuals in the group to whom services were provided;

3. A list of the specific services provided; and

4. The date that the specific services were provided.

(b) Each licensee who fits and sells a hearing aid shall create and maintain, for a period of 4 years, records and documentation of:

1. Any pure tone audiometric testing conducted by air or bone;

2. Any testing to determine speech reception thresholds, speech discrimination, and listening and loudness levels;

3. The medical clearance or waiver of medical clearance required by Section 468.1225(4), F.S.;

4. When applicable, the waiver required by Section 468.1225(6), F.S., for audiometric testing not conducted in a certified testing room;

5. The receipt for the sale of hearing aids required by Section 468.1245(2), F.S.; and

6. Notification to the buyer of written notice of the 30-day trial period and money-back guarantee required by Section 468.1246, F.S.

Specific Authority 468.1135(4), 468.1225(1), (2), (3), (4), (5), (6), (7), 468.1245(1), (2), (3), 468.1246(1) FS. Law Implemented 468.1135, 468.1225, 468.1245, 468.1246 FS. History–New _____.

DEPARTMENT OF HEALTH

Division of Environmental Health

RULE CHAPTER NO.: RULE CHAPTER TITLE:

64E-6

Standards for Onsite Sewage

Treatment and Disposal Systems

PURPOSE AND EFFECT: Develop rules to incorporate necessary technical changes and incorporate modifications proposed through the Technical Review and Advisory Panel.

SUBJECT AREAS TO BE ADDRESSED: Areas to be discussed include: Onsite sewage treatment and disposal system design, permitting, construction, and maintenance; Septic Tank Contractor registration and training standards.

SPECIFIC AUTHORITY: 381.0011(4), (13), 381.006, 381.0065(3)(a), (4)(k), 381.0069, 489.553(2), (3), 489.557(1) FS.

LAW IMPLEMENTED: 154.01, 381.001(2), 381.0011(4), 381.006(7), 381.0061, 381.0065, 381.00655, 154.06, 381.0011, 381.0012, 381.0025, 381.006, 381.0061, 381.0065, 381.0066, 381.0067, 381.0069, 386.041, 489.552, 489.553, 489.557 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Gerald Briggs, Department of Health, Bureau of Onsite Sewage Programs, HSES, 4042 Bald Cypress Way, Bin #A08, Tallahassee, FL 32399-1713

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

DEPARTMENT OF FINANCIAL SERVICES

Division of Agent and Agency Services

RULE NOS.:	RULE TITLES:
69B-220.001	Pre-qualification and Licensure of Emergency Adjusters
69B-220.051	Conduct of Public Adjusters
69B-220.201	Ethical Requirements

PURPOSE AND EFFECT: The purpose of the proposed rule development is to eliminate the licensing of emergency public adjusters, to make the licensing process for emergency company and independent adjusters faster and more economical by utilization of the Department’s website and to change Office of Insurance Regulation to Department of Financial Services to reflect legislation that changed jurisdiction over adjusters. The purpose of a new rule that applies to public adjusters after the Governor issues an executive order that a state of emergency exists is to protect consumers who hire public adjusters after disasters. The purpose of other changes is to clarify the rules.

SUBJECT AREA TO BE ADDRESSED: Rule 69B-220.001, F.A.C., is amended to repeal rules that provide for the licensing of emergency public adjusters and to require that adjuster license applications be submitted electronically through the Department’s website instead of by submission of paper applications. All three rules are amended to change Office of

Insurance Regulation to Department of Financial Services to reflect legislation adopted in 2004 that made the same changes in the statutes that regulate adjusters. Rule 69B-220.201, F.A.C., is amended to provide new ethical requirements for public adjusters to follow after a disaster creates a state of emergency.

SPECIFIC AUTHORITY: 624.308(1), 626.878, 626.9611 FS.

LAW IMPLEMENTED: 624.307(1), 626.112(1), 626.611, 626.621, 626.865(2), 626.8732, 626.8734, 626.874, 626.878, 626.9541(1)(b), (i) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Hazel Muhammad, Chief, Bureau of Licensing, Department of Financial Services, 200 E. Gaines Street, Room 412, Larson Building, Tallahassee, FL 32399-0319, (850)413-5460

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting Serica Johnson, (850)413-4241.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

69B-220.001 Pre-Qualification and Licensure of Emergency Adjusters.

(1) Purpose. This rule sets forth ~~department office~~ policy and procedure for licensure of emergency ~~company adjusters~~ and emergency independent adjusters under Section 626.874, Florida Statutes.

(2) No change.

(3) Definitions. For purposes of this rule, the following definitions shall apply.

(a) “Department” means the Department of Financial Services ~~“Office” means the Office of Insurance Regulation.~~

(b) “Licensed adjuster” and similar terms, refer to and include only persons ~~actually~~ currently licensed in good standing by the ~~department office~~ as a ~~public adjuster~~, company adjuster, or independent adjuster, whether the licensure be permanent resident licensure, permanent nonresident licensure or emergency licensure pursuant to this rule, and whether limited licensure or unlimited licensure. The terms do not include persons licensed as public adjusters by the department or persons licensed as any type of an adjuster or public adjuster by states other than the State of Florida.

(c) “Emergency” and “Catastrophe.” These two terms as used in Section 626.874, Florida Statutes, are synonymous, and no separate treatment is afforded catastrophe over emergency adjusters.

(d) "Emergency adjuster" when used in this rule without further specification, includes emergency company adjusters ~~and~~; emergency independent adjusters, ~~and emergency public adjusters.~~

~~(e) "Public adjuster" when used in this rule without further specification, includes both permanent resident licensed public adjusters and emergency public adjusters.~~

~~(e)(f) "Unlicensed persons" as used in this rule means and refers to persons who are not actually currently licensed in good standing by the department office as an adjuster, whether the licensure be permanent resident licensure, or emergency licensure pursuant to this rule.~~

(4) General Provisions Applicable to All Emergency Adjusters.

(a) Declaration of Emergency; Determination that Emergency Exists.

1. The department office does not issue proclamations or other formal declarations of emergency. Instead, any person believing that an emergency exists and desiring licensure under Section 626.874, Florida Statutes, shall apply or cause application to be made to the department office for such licensure.

2. For purposes of Section 626.874, Florida Statutes, an emergency exists when, due to a specific, infrequent, and sudden natural or manmade disaster or phenomenon, there have arisen losses to property in Florida that are covered by insurance, and the losses are so numerous and severe that resolution of claims related to such covered property losses will not occur expeditiously without the licensing of emergency adjusters due to the magnitude of the catastrophic damage.

3. A failure of claims to be resolved expeditiously shall exist upon an insurer's filing with the department Office a written statement that one of the following conditions exists:

a. The insurer expects to incur at least 500 claims as a result of the event; or

b. The magnitude of the event is expected to generate twice the mean number of claims for one month for the affected area.

~~(b)4. Requests for emergency adjuster licensure as an independent adjuster must be accompanied by a statement from an insurer, an independent adjusting firm, a licensed independent resident adjuster, or a licensed general lines agent certifying that the applicant is qualified to act as an adjuster the same statement from an insurer who requires such services.~~

~~5. If the Office determines that an emergency exists, public adjusters seeking emergency licensure shall upon request be granted licensure pursuant to the provisions of this rule.~~

~~(b) Licenses Valid for 180 Days.~~

~~1. Emergency adjuster licenses are valid for 180 days from the date of issuance of the emergency license, unless a shorter period of time is specified in the license as issued. Because~~

~~emergency licensure is an extraordinary deviation from regular licensing procedures, it is office policy to specify, as the duration of emergency licensure, the shortest possible time in each particular emergency.~~

~~2. The office shall grant an extension of emergency licensure if the conditions set forth in subparagraph (4)(a)2. of this rule still exist. Each extension will last for a period of up to an additional 180 days.~~

~~a. To apply for an extension of licensure as an emergency company or independent adjuster, the licensee shall execute Form OIR-396E, "Application for Extension of License and Appointment as an Emergency Adjuster," rev. 10/95, which is hereby adopted and incorporated by reference, and shall submit to the office the applicable fee, as specified in Form OIR-396E, for each extension.~~

~~b. To apply for an extension of licensure as an emergency public adjuster the licensee shall execute Form OIR-AAS-1E, "Application for Extension of License and Appointment as an Emergency Public Adjuster," rev. 10/95, which is hereby adopted and incorporated by reference, and shall submit the fee specified in Form OIR-AAS-1E, for each extension.~~

~~e. These forms may be obtained at the Bureau of Licensing, 200 East Gaines Street, Tallahassee, Florida 32399-0319.~~

~~d. Only the licensure type and class which the licensee holds at the time of application for extension may be extended.~~

~~(e) "Temporary Licenses." The provisions of Section 626.872, Florida Statutes, regarding "Temporary Licenses" are not applicable to licensing persons temporarily for catastrophe or emergency situations.~~

~~(d) Emergency Related Losses Only. Licensure as an emergency adjuster may be used only for adjustment of losses directly resulting from the emergency regarding which the license was issued.~~

~~(e) Natural Persons Only. The office issues emergency adjuster licenses only to natural persons.~~

~~(f) Address For Office. Unless a different address is specified herein, any notice or other item to be provided to the office, shall be addressed as follows: Bureau of Agent/Adjuster Licensing, Office of Insurance Regulation, 200 East Gaines Street, Tallahassee, FL 32399-0319. If the communication is from or on behalf of a licensee, it shall not be deemed effectively received unless it shows the licensee's full name, license number, address, and phone number.~~

~~(g) Administrative Jurisdiction. By applying for pre-qualification determination or licensure as an emergency adjuster the applicant agrees that:~~

~~1. The applicant is subject to all the disciplinary provisions and penalties of the Florida Insurance Code and the administrative procedures set forth in the Florida Statutes for the routine processing of such charges;~~

2. Jurisdiction for acts committed prior to licensure or while licensed continues after the emergency licensure expires or is terminated;

3. If after the licensure expires or is terminated, the office has reason to believe there was a violation of any provision of the Florida Insurance Code by the former licensee while licensed, the office is not precluded from filing administrative action against the former licensee, and from serving the charges by certified mail to the licensee, or by publication of notice of action in the legal notices section of a newspaper of general circulation in or near the city or county of permanent residence or place of business as shown on the licensee's application for emergency licensure if certified mail service is unsuccessful;

4. The former licensee will respond to and defend the charges in Florida, or be defaulted;

5. The former licensee will not assert lack of jurisdiction; and

6. The former licensee believes that the preceding provisions satisfy minimum due process requirements of all state and federal constitutions.

(h) Civil Jurisdiction; Service of Process. By the act of applying for pre-qualification determination or licensure as emergency public adjuster, the applicant irrevocably:

1. Agrees and submits to the jurisdiction of the courts of Florida concerning civil liability for all acts in any way related to the licensee's activities under licensure in Florida;

2. Designates the Chief Financial Officer as the applicant's agent for service of all process in any way related to the applicant's activities licensed as an emergency public adjuster; and

3. Agrees that these provisions shall survive the expiration or termination of pre-qualification or licensure.

(5) Procedures for Licensing and Appointment of Emergency Adjusters; Responsibilities of Appointing Entity.

(a) All Florida-licensed insurers, independent adjusting firms, independent adjusters, and general lines agents, shall use the following procedures to utilize emergency company or independent adjusters. The entities or persons listed in the preceding sentence may immediately and without advance paperwork to this department, engage and cause commencement of catastrophe adjusting work for themselves, by any persons, whether on their staff, or hired by them, or engaged by them as independent contractors or as employees of a contractor engaged by them, although the person is not currently licensed as an adjuster in Florida, if the Florida-licensed insurer, independent adjusting firm, independent adjuster or general lines agent utilizing these persons as emergency or catastrophe adjusters determine that these persons are qualified to do such adjusting work. A person is not qualified to adjust claims, for any entity or person who utilizes computer software program(s) in the adjusting process, unless the person has received training in and is capable of

correctly utilizing the program(s). Within 7 calendar days after adjusting work has begun, the appropriate official must submit the "Application for License and Appointment as a Catastrophe or Emergency Adjuster," Rev. 5/06, to the Department. All applications shall be submitted through the Department's website at <https://aalf.fldfs.com/common/com index.asp>. Applicable fees shall be submitted by electronic payment at the time of submission of an application.

1. The insurance company representative, independent adjusting firm, independent adjuster or general lines agent who submits the online application certifies that the applicant is qualified, thereby appoints the applicant to represent that company, independent adjusting firm, independent adjuster or general lines agent; and once the license is issued, the appointing person or entity is bound by the acts of the applicant as in the case of any regular licensed (non-Temporary or non-Catastrophic) adjuster licensed pursuant to Chapter 626, Florida Statutes, appointed by that company, independent adjusting firm, independent adjuster or general lines agent. This responsibility continues until the appointing entity, appointing person or licensee notifies the department through the online appointment system or the licensee notifies the department through the online application process that the appointing entity, appointing person or licensee desires to terminate the appointment.

2. The insurance company, independent adjusting firm, independent adjuster or general lines agent who certifies to the department that the applicant is qualified, is responsible for assuring, by due diligence inquiry, that the applicant is in fact qualified to adjust claims, has received training in and is capable of correctly utilizing any computer software program(s) utilized by the appointing entity or person to adjust claims and is of good and honest character.

(b) There is an affirmative duty on the insurance company, independent adjusting firm, independent adjuster or general lines agent who certifies to the department that the applicant is qualified, to provide continuing and significant supervision of the applicant after licensure.

(c) Emergency adjuster licenses are valid for 180 days from the date of issuance of the emergency license, unless a shorter period of time is specified in the license as issued. Because emergency licensure is an extraordinary deviation from regular licensing procedures, it is department policy to specify, as the duration of emergency licensure, the shortest possible time in each particular emergency.

(6) Procedures for Extension of an Emergency Adjuster License. The department shall grant an extension of emergency licensure if the conditions set forth in subparagraph (4)(a)2. of this rule still exist. Each extension will last for a period of up to an additional 180 days.

(a) To apply for an extension of licensure as an emergency company or independent adjuster, the entity requesting a license extension shall submit an application for the extension

on the department's website at www.fldfs.com. Applicable fees shall be submitted by electronic payment at the time of submission of an application for the extension.

(b) Only the licensure type and class that the licensee holds at the time of application for extension may be extended.

(c) "Temporary Licenses." The provisions of Section 626.872, Florida Statutes, regarding "Temporary Licenses" are not applicable to licensing persons temporarily for catastrophe or emergency situations.

(d) Emergency-Related Losses Only. Licensure as an emergency adjuster may be used only for adjustment of losses directly resulting from the emergency regarding which the license was issued.

(e) Natural Persons Only. The department issues emergency adjuster licenses only to natural persons.

(f) Address and Website for the Department. Unless a different address is specified herein, any notice or other item to be provided to the department, shall be addressed as follows: Bureau of Licensing, Department of Financial Services, 200 East Gaines Street, Tallahassee, FL 32399-0319. The department's website address is www.fldfs.com.

(g) Administrative and Civil Jurisdiction. By obtaining a license as an emergency adjuster the licensee agrees that:

1. The licensee is subject to all the disciplinary provisions and penalties of the Florida Insurance Code and the administrative procedures set forth in the Florida Statutes for the routine processing of such charges;

2. The licensee is subject to the jurisdiction of the courts of Florida concerning civil liability for all acts in any way related to the licensee's activities under licensure in Florida;

3. Jurisdiction for acts committed prior to licensure or while licensed continues after the emergency licensure expires or is terminated;

4. If after the licensure expires or is terminated, the department has reason to believe there was a violation of any provision of the Florida Insurance Code or these rules by the former licensee while licensed, the department is not precluded from filing administrative action against the former licensee, and from serving the charges by certified mail to the licensee, or by publication of notice of action in the legal notices section of a newspaper of general circulation in or near the city or county of permanent residence or place of business as shown on the licensee's application for emergency licensure if certified mail service is unsuccessful;

5. The licensee or former licensee will respond to and defend the charges in Florida, or be defaulted;

6. The licensee or former licensee will not assert lack of jurisdiction; and

7. The licensee or former licensee believes that the preceding provisions satisfy minimum due process requirements of all state and federal constitutions.

(h) By the act of obtaining licensure as an emergency adjuster, a nonresident licensee irrevocably designates the Chief Financial Officer as the licensee's agent for service of all process in any way related to the licensee's activities as an emergency adjuster.

(5) Emergency Company and Independent Adjusters. The provisions of this subsection apply only to emergency company and emergency independent adjusters, and not to licensure of emergency public adjusters.

(a) ~~All Florida-licensed insurers, independent adjusters, and general lines agents, shall use the following procedures to utilize emergency company or independent adjusters. The entities or persons listed in the preceding sentence may immediately and without advance paperwork to this department, engage and cause commencement of catastrophe adjusting work for themselves, by any persons, whether on their staff, or hired by them, or engaged by them as independent contractors or as employees of a contractor engaged by them, which persons they determine to be qualified to do such adjusting work, and even though the person is not currently licensed as an adjuster in Florida. Within 30 calendar days after adjusting work has begun, the appropriate entity official must execute and submit office Form OIR-396, "Application for License and Appointment as a Catastrophe or Emergency Adjuster," rev. 7/94, which is hereby adopted and incorporated by reference, and shall attach a check for applicable fee per applicant, as specified in Form OIR-396, payable to the Office of Insurance Regulation. Form OIR-396 is available at all office consumer service offices or from the office headquarters. The application and check shall be submitted to: Bureau of Licensing, P. O. Box 6000, Tallahassee, FL 32314-6000, or by overnight courier to: Bureau of Licensing, 200 East Gaines Street, Tallahassee, FL 32399-0319. One check may be used to pay the fees for multiple applications submitted together.~~

(b) ~~Within 3 days of when an emergency adjuster begins work, the insurance company, independent adjuster, or general lines agent that is using the emergency adjuster must fax to the Bureau of Licensing the name of the emergency adjuster and his/her social security number. The fax must be on the letterhead of the insurance company, general lines agent, or independent adjuster/firm, and shall include the name and phone number of the contact person regarding emergency adjuster licensing. Contact should be made with the office for the appropriate fax numbers.~~

(c) ~~The insurance company representative, general lines agent, or independent adjuster who signs Form OIR-396 to certify that the applicant is qualified (referred to herein as the "certifier"), thereby appoints the applicant to represent that company, agent, or independent adjuster; and once the license is issued, the certifier is bound by the acts of the applicant as in the case of any regular licensed (non Temporary or non Catastrophic) adjuster licensed pursuant to Chapter 626,~~

Florida Statutes, appointed by that company, agent, or independent adjuster. Such responsibility continues until such time as said certifier shall notify the office in writing that the certifier desires to terminate the certification, at which time the emergency license is cancelled automatically, until such time as the applicant can obtain another certifier.

(d) The insurer, general lines agent, or independent adjuster who certifies to the office that the applicant is qualified, is responsible for assuring, by due diligence inquiry, that the applicant is in fact qualified to adjust claims and is of good and honest character.

(e) There is an affirmative duty on the insurance company, general lines agent, or independent adjuster, to provide continuing and significant supervision to the applicant after licensure.

(f) ~~Nonresident Company Adjusters. Persons employed by insurers and licensed by the office as non-resident company adjusters may temporarily come into Florida and work out of Florida offices as emergency adjusters for their employing insurance company without further licensure from the office, for 180 days or such shorter time as the office may by emergency rule specify as the maximum duration of emergency licensure for that particular emergency, and will not be deemed to have a Florida office such as would disqualify them from holding non-resident licensure or be held violative of their non-resident license status; provided, their employing insurance company shall before allowing such persons to adjust emergency losses while physically in Florida, provide the office with a listing of the names and adjuster license numbers of all such persons, and shall obtain from the office written acknowledgment that an emergency exists, specifying the emergency.~~

(g) ~~Application for Emergency Adjuster Licensure as a Company or Independent Adjuster. Application for licensure as an Emergency Adjuster shall be made on Form OIR 396, "Application for Licensure and Appointment as Emergency Adjuster," rev. 10/95, which is hereby adopted and incorporated by reference.~~

(6) ~~Emergency Public Adjusters: General Provisions. This subsection pertains only to licensure of emergency public adjusters.~~

(a) ~~Advance Approval Required.~~

1. ~~No person may commence work as an emergency public adjuster until notified in writing by the office that the office:~~

a. ~~Has received an application and made an affirmative pre-qualification determination and issued a letter so indicating, or~~

b. ~~Has been approved for licensure if no pre-qualification determination was requested in advance.~~

2. ~~If the pre-qualification method is used, the subject of the pre-qualification must request licensure pursuant to paragraph (7)(b) of this rule in order to commence work.~~

(b) ~~Background Checking; Grounds for Denial. As to all applications for licensure as an emergency public adjuster, the office shall conduct such background inquiry as is necessary to determine the applicant's fitness and character. Adverse information noted in any area will be grounds for denial of application. The inquiry is limited to:~~

1. ~~Inquiry of state or federal regulatory authorities in other states where the applicant has resided or done business;~~

2. ~~Checking references provided;~~

3. ~~Inquiry of criminal databases and law enforcement authorities; and~~

4. ~~Checking for judgments and other adverse credit references.~~

(c) ~~Bond Required. No person will be licensed as an emergency public adjuster unless the applicant has supplied to the office the \$5,000 bond required by Section 626.865(2), Florida Statutes. Applications for licensure will be received and preliminarily processed without the bond, but no licensure shall be issued until the bond is received in good and proper form.~~

(d) ~~Policy Regarding Licensure Threshold. It is office policy and finding that a substantially higher threshold of certainty regarding fitness and character is appropriate and required for licensure as an emergency public adjuster, as compared to licensure as an emergency company or independent adjuster. This is because if a company or independent adjuster proves dishonest or incompetent, there is generally a regulated insurance company that may be required to make good that adjuster's misconduct. However, regarding a public adjuster, there is no such safeguard for consumers.~~

(e) ~~Records To Be Kept.~~

1. ~~All emergency public adjusters shall at all times while licensed and for 30 days thereafter maintain in Florida an office and keep their records or copies of all records relating to all Florida losses being adjusted or previously adjusted under said emergency licensure. All emergency public adjusters licensed under this rule shall designate their Florida office location to the office within 72 hours after becoming licensed, and shall notify the office in writing within 24 hours of any change in said office location. Failure to designate such an office or to timely update the office as to its location is grounds for immediate termination of licensure. The address of this office shall appear on all contracts, literature, etc., used by the public adjuster. This office shall be open and staffed at least six hours of every day, between the hours of 8 a.m. and 5 p.m., Monday through Friday, public holidays excluded.~~

2. ~~The records and offices of all emergency public adjusters shall be subject to inspection by the office without notice at any time.~~

(f) ~~Advertising. All emergency public adjusters are strictly prohibited from advertising. Advertising means promotions, statements of availability, qualifications, and other similar statements, appearing on or in television, radio, newspapers, or~~

magazines; and flyers, brochures, adhesive stickers affixed to any structure showing the adjusters name, address, phone number, and other similar information. Emergency public adjusters shall not use the services of any person or firm, who advertises for the emergency public adjuster, or who is directly or indirectly compensated for referring potential clients to the emergency public adjuster. The following do not constitute prohibited advertising:

1. The emergency public adjuster personally handing to any claimant or potential claimant brochures or other descriptive materials as to the public adjusting function, the public adjuster's qualifications, fees, and other similar information.

2. Solicitation (as defined herein) of work, by the emergency public adjuster in person, wherein the solicitation is made to the loss claimant, and subject to other limitations in this rule concerning solicitation; provided, limited emergency public adjusters may not solicit work on any premises which are not clearly commercial premises.

(g) ~~Advising Claimants and Others.~~ The advising of insureds, claimants, potential claimants, or other persons as to the role, value, or usefulness of public adjusters is deemed to be a material part of the business of public adjusting, and therefore requires licensure as a public adjuster under the laws of Florida and this rule, and may be engaged in only by persons licensed by the office as permanent or emergency public adjusters. Unlicensed persons may not engage in such activity even under the supervision of a licensed public adjuster.

(h) ~~Certain Contracts Unenforceable.~~ It is office policy that contracts engaging the services of a public adjuster, entered into in violation of any provisions of this rule or any emergency rule, shall be declared unenforceable on the part of any public adjuster, as violative of public policy.

(i) ~~Photo ID Required.~~ No emergency public adjuster, once approved for licensure by the office, shall be licensed or commence work, until obtaining from the office a photo identification card, paying in connection therewith the applicable fee as specified in Forms OIR AAS 1 and OIR AAS 3.

(7) Emergency Public Adjuster Applicants.

(a) To apply for licensure as an emergency public adjuster, the applicant shall execute Form OIR AAS 1, "Application for License and Appointment as an Emergency Public Adjuster," rev. 3/96 which is hereby adopted and incorporated by reference, and shall submit the fee specified in Form OIR AAS 1.

(b) To apply for pre-qualification determination for licensure as an emergency public adjuster, the applicant shall execute Form OIR 1199 "Application for Pre-qualification for Licensure as An Emergency Public Adjuster" Rev. 6/96 which is hereby adopted and incorporated by reference, and shall submit the fee specified in Form OIR 1199.

(c)1. Pre-Qualification Determination is not required for licensure as an Emergency Public Adjuster. However, persons are urged to pre-qualify prior to a disaster in order to expedite the emergency licensure process.

2. Pre-Qualification Determination requests will be considered between January 1 and April 30 of each year.

3. Any Pre-Qualification Determination made will be valid for a period of two years.

(d)1. Persons may apply for pre-qualification determination or licensure as an emergency public adjuster if they are currently licensed as a public adjuster in their home state for the type or kinds of insurance for which they intend to adjust claims in this state.

2. Applicants must be in good standing in all states where so licensed.

3. Evidence of good standing must be in the form of a current original Letter of Certification from the applicable state insurance department(s). The letter shall not be older than 90 days when submitted in connection with the application for licensure or pre-qualification determination.

(e) The application form must be signed by three persons:

1. The person to receive emergency licensure;

2. A regularly licensed (non-Temporary, non-Catastrophic) public adjuster who will supervise the emergency public adjuster (the supervising public adjuster); and 3. One of the following persons (the certifying person):

a. An officer of a Florida licensed or admitted insurance company; or

b. A Florida licensed independent adjuster in good standing; or

c. A Florida licensed resident general lines insurance agent in good standing.

(f) The application forms may be obtained at all office consumer service offices or from office headquarters in Tallahassee and must be sent, with a check for the applicable fee, as specified in Form OIR AAS 1 or OIR 1199, to: Office of Insurance Regulation, P. O. Box 6000, Tallahassee, FL 32314-6000; or the applicant may contact the office for an address for use of overnight courier service.

(g) ~~Supervising Public Adjuster.~~ Licensees who are licensed under this subsection must be supervised by a regularly licensed (non-Temporary, non-Catastrophic) resident public adjuster in good standing while they are performing work under their emergency public adjuster licensure. The emergency licensure automatically terminates if the supervising public adjuster ceases to supervise the emergency adjuster. The emergency adjuster will be deemed to be an appointee of the supervising public adjuster. The supervising public adjuster is under an affirmative duty to provide continuing, significant supervision to the emergency public adjuster whose application he/she signed. The supervising public adjuster may prospectively terminate this duty at any time by notifying the office by certified mail, return receipt

requested, or by overnight courier, that he/she will no longer be supervising the emergency public adjuster as of a date specified in said letter. Such a notice is not effective until actually received by the office.

~~(8) Non Resident Public and Independent Adjusters. Non Resident Public and Independent Adjusters are required to annually execute Form OIR 1297, "Affidavit of Insurance For Non Resident Public and Independent Adjusters", rev. 10/02 which is hereby adopted and incorporated by reference. A copy of Form OIR 1297 may be obtained from the State of Florida, Office of Insurance Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0319, phone (850)413-3137.~~

Specific Authority 624.308(1) FS. Law Implemented 624.307(1), 626.8732, 626.8734 FS. History—New 2-25-93, Amended 8-18-94, 1-7-97, 10-20-97, 1-9-03, Formerly 4-220.001, Amended _____.

69B-220.051 Conduct of Public Adjusters.

(1) Purpose and Scope. This rule sets forth department Office policy as to certain matters generally affecting public adjusters. Procedures regarding application for licensure are not dealt with in this rule. Ethical provisions are not dealt with in this rule.

(2) Definitions. The following definitions shall apply for purposes of this rule.

(a) through (c) No change.

(d) "Licensed public adjuster" and "public adjuster" refer to and include only persons ~~actually~~ currently licensed in good standing by the department Office as public adjusters, whether the licensure is resident licensure under Section 626.865, Florida Statutes, or nonresident licensure under Section 626.8732, Florida Statutes ~~emergency licensure under Section 626.874, Florida Statutes, and whether the licensure is limited or unlimited.~~ The phrase does not include persons licensed as public adjusters by other states but not by the State of Florida.

~~(e) "Resident public adjuster" and references thereto refers to a public adjuster not licensed on an emergency basis as contemplated by Section 626.874, Florida Statutes, and Rule 69B-220.001, F.A.C., and who is a bona fide resident of this state.~~

~~(e)(f) "Unlicensed persons," as used in this rule, means and refers to persons who are not actually currently licensed and appointed in good standing by the department Office as resident or nonresident emergency public adjusters.~~

(3) Communications Concerning Public Adjuster Services.

(a) Solicitation. The solicitation of public adjusting business for compensation is deemed to be a material part of the business of public adjusting and, therefore, requires licensure as a public adjuster under the laws of Florida and the rules of the department Office, and shall be engaged in only by persons licensed by the department Office as public adjusters. Unlicensed persons shall not engage in such activity even under the supervision of a licensed public adjuster. The phrase

"solicitation of public adjusting business" and similar phrases as used in this rule means, for compensation, initiating contact with any person, whether in person, by mail, by telephone, or otherwise, and therein seeking, causing, urging, advising, or attempting:

1. To have any person enter into any agreement engaging the services of a public adjuster in any capacity; or

2. To have any person subsequently speak or meet with a licensed public adjuster for the purpose of engaging the services of a public adjuster in any capacity or for the purpose of being advised by a public adjuster in any regard.

(b) No change.

(4) Advertising.

(a) As with all forms of advertising concerning the business of insurance, public adjusters shall not falsely inform or advertise as set forth in Section 626.9541(1)(b), Florida Statutes, as well as any other section within the Insurance Code that which relates to advertising.

(b) Only Licensed Adjusters to Advertise. No person or entity shall in any way advertise services as a public adjuster in this state, unless such person or entity is licensed as a resident public adjuster or is a member of the Florida Bar.

(c) Advertisements to Show Licensee's Full Name. Any advertisement by a ~~resident~~ public adjuster shall state the full name as specified in department Office records of the public adjuster who has caused the advertisement to appear. Where a firm containing multiple licensed public adjusters is causing the advertisement to appear, the firm shall designate one of said licensees whose full name as specified in department Office records shall appear in the advertisement.

1. Print and Website Advertisements. In print and website advertisements the public adjuster's full name as specified in department Office records shall be in typeface no smaller than the typeface of the main body of text in the advertisement. Print advertisements include newspapers, magazines, flyers, brochures, business cards, adhesive and magnetic publication, and similar printed materials. If the material is already printed when this rule takes effect, the required public adjuster's full name shall be added by means of rubber stamp, adhesive label, or other means.

2. Television Advertisements. In television advertisements the public adjuster's full name as specified in department Office records shall be made to appear on the screen for a period reasonably calculated to allow a viewer to write the name down.

3. Radio Advertisements. In radio advertisements, the public adjuster's full name as specified in department Office records shall be read during the advertisement, and at a speed reasonably calculated to allow an average listener to note the name of the licensee as it appears on his or her licensure.

(d) Responsibility of Advertising Licensee. The licensed adjuster whose name appears in the advertisement is responsible for personally reviewing the content of the

advertisement and assuring that the advertisement complies with the rules of the ~~department~~ Office and the Insurance Code and is in all regards fair, accurate, and in no way deceptive or misleading.

(5) It is the affirmative duty of every ~~resident~~ public adjuster to supervise their business affairs and their staff to ensure to the extent it is within the public adjuster's power that the Florida Insurance Code and Rule Chapter 69B-220, F.A.C., are rule is not violated.

(6) No change.

(7) All contracts for public adjuster services must be in writing. The contract must 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 permanent home address and home phone number, and permanent home state business address and phone number and Florida Department license number.~~

(8) No change.

Specific Authority 624.308(1), 626.9611 FS. Law Implemented 624.307(1), 626.112(1), 626.865(2), 626.874, 626.9541(1)(b), (i) FS. History—New 4-26-94, Amended 12-18-01, Formerly 4-220.051, Amended.

69B-220.201 Ethical Requirements.

(1) Definitions. The following definitions shall apply for purposes of this rule.

(a) No change.

(b) No change.

(c) "Department" means the Florida Department of Financial Services ~~"Office" refers to the Florida Office of Insurance Regulation.~~

(d) No change.

(2) No change.

(3) Code of Ethics. The work of adjusting insurance claims engages the public trust. An adjuster shall put the duty for fair and honest treatment of the claimant above the adjuster's own interests in every instance. The following are standards of conduct that define ethical behavior, and shall constitute a code of ethics that which shall be binding on all adjusters:

(a) through (h) No change.

(i) ~~An adjuster shall not negotiate or effect settlement directly or indirectly with any third-party claimant represented by an attorney, if the adjuster has knowledge of such representation, except with the consent of the attorney.~~

~~2-~~ For purposes of this subsection, the term "third-party claimant" does not include the insured or the insured's resident relatives.

(j) ~~An adjuster is permitted to interview any witness, or prospective witness, without the consent of opposing counsel or party. In doing so, however, the adjuster shall scrupulously~~

avoid any suggestion calculated to induce a witness to suppress or deviate from the truth, or in any degree affect the witness's appearance or testimony during deposition or at the trial.

~~2-~~ If any witness making or giving a signed or recorded statement so requests, the witness shall be given a copy of the statement.

(k) No change.

(l) ~~An adjuster shall not attempt to negotiate with or obtain any statement from a claimant or witness at a time that the claimant or witness is, or would reasonably be expected to be, in shock or serious mental or emotional distress as a result of physical, mental, or emotional trauma associated with a loss.~~

~~2-~~ The adjuster shall not conclude a settlement when the settlement would be disadvantageous to, or to the detriment of, a claimant who is in the traumatic or distressed state described above ~~in subparagraph (l)~~.

(m) ~~An adjuster shall not knowingly fail to advise a claimant of the claimant's claim rights in accordance with the terms and conditions of the contract and of the applicable laws of this state.~~

~~2-~~ An adjuster shall exercise care not to engage in the unlicensed practice of law as prescribed by the Florida Bar.

(n) ~~A company or independent adjuster shall not draft special releases called for by the unusual circumstances of any settlement or otherwise draft any form of release, unless advance written approval by the insurer can be demonstrated to the Department.~~

~~2-~~ Except as provided above, a company or independent adjuster is permitted only to fill in the blanks in a release form approved by the insurer they represent.

(o) No change.

(p) ~~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.

(q) ~~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.

(r) ~~No public adjuster, while so licensed in the Department's records, 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 the Department's records, may represent or act as a public adjuster.~~

~~(s) A company adjuster, independent adjuster, attorney, investigator, or other person acting on behalf of an insurer that needs access to an insured or claimant or to the insured property that is the subject of a claim shall provide at least 48 hours notice to the insured or claimant prior to scheduling a meeting with the insured or claimant or an on-site inspection of the insured property. The insured or claimant may deny access to the property if this notice has not been provided.~~

(4) Public Adjusters, Other Ethical Constraints. In addition to considerations set out above for adjusters, the following ethical considerations are specific to public adjusters and shall be binding upon public adjusters:

(a) No change.

~~(b) The public adjuster shall notify the insured or claimant in advance of the name and location of any proposed contractor, architect, engineer, or similar professional, before any bid or proposal by any of these persons may be used by the public adjuster in estimating the loss or negotiating settlement.~~

~~2. The insured or claimant may exercise veto power of any of these persons, in which case that person shall not be used in estimating costs.~~

(c) through (e) No change.

~~(f) A public adjuster shall not accept referrals of business from any person with whom the public adjuster may conduct business where there is any form or manner of agreement to compensate the person, whether directly or indirectly, for referring business to the public adjuster.~~

~~2. Except as between licensed public adjusters, no public adjuster shall compensate any person, whether directly or indirectly, for the principal purpose of referring business to the public adjuster.~~

~~(g) 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 3 business days after the contract is executed.~~

~~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 3-day cancellation period.~~

(h) through (i) No change.

(j) A public adjuster shall not restrict or prevent an insurer, company adjuster, independent adjuster, attorney, investigator, or other person acting on behalf of the insurer from having reasonable access at reasonable times to an insured or claimant or to the insured property that is the subject of a claim.

(5) Public Adjusters, Ethical Constraints During State of Emergency. In addition to considerations set forth above, the following ethical considerations shall apply to public adjusters in the event that the Governor of the State of Florida issues an Executive Order, by virtue of the authority vested in Article IV, Section 1(a) of the Florida Constitution and by the Florida Emergency Management Act, as amended, and all other applicable laws, declaring that a state of emergency exists in the State of Florida:

(a) No public adjuster shall require, demand, charge or accept any fee, retainer, compensation, commission, deposit, or other thing of value, prior to receipt by the insured or claimant of a payment on the claim by the insurer.

(b) 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 the amount of any insurance settlement or claim payment.

(c) No public adjuster shall enter into any contract, agreement or other arrangement with any person, including an attorney, building contractor, architect, appraiser or repairman, by which the person would enter into an agreement to assist a claimant or insured on an insurance claim, utilize the services of the adjuster to carry out the agreement and pay the adjuster an amount that would exceed the limitation of the adjuster's compensation or reimbursement as provided in paragraph (b) above.

(d) This subsection applies to all claims that arise out of the events that created the State of Emergency, whether or not the adjusting contract was entered into while the State of Emergency was in effect and whether or not a claim is settled while the State of Emergency is in effect.

Specific Authority 624.308, 626.878, 626.9611 FS. Law Implemented 624.307(1), 626.611, 626.621, 626.865(2), 626.878, 626.9541(1)(i) FS. History—New 6-2-93, Amended 12-18-01, 3-27-05, Formerly 4-220.201, Amended _____.

DEPARTMENT OF FINANCIAL SERVICES

Division of Workers' Compensation

RULE NO.:	RULE TITLE:
69L-6.021	Construction Industry Classification Codes, Descriptions, and Operations Scope of Exemption

PURPOSE AND EFFECT: To delete class code 5536 "Heating and Air Conditioning Duct Work – Shop and Outside – and Drivers", class code 6003 "Pile Driving" and class code 6005 "Jetty or Breakwater Construction – All Operations to Completion and Drivers" from the rule as those class codes have been discontinued in the Florida Contracting Classification Premium Adjustment Program, and published in the Florida exception pages of the National Council on Compensation Insurance, Inc. (NCCI) Basic Manual (October 2005 edition). To include class code 6004 "Land Pile Driving"

and class code 6006F “Marine Pile Driving, Dock & Seawall, Jetty or Breakwater, Dike or Revetment Construction – All Operations to Completion & Drivers” in the rule as those class codes have been included in the classification codes and descriptions that are specified in the Florida Contracting Classification Premium Adjustment Program, and published in the Florida exception pages of the National Council on Compensation Insurance, Inc. (NCCI) Basic Manual (October 2005 edition).

SUBJECT AREA TO BE ADDRESSED: Construction industry class codes for purposes of workers’ compensation.

SPECIFIC AUTHORITY: 440.02(8), 440.591 FS.

LAW IMPLEMENTED: 440.02(8) FS.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: July 11, 2006, 10:00 a.m.

PLACE: Room 104J, Hartman Building, 2012 Capital Circle, S. E., Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Andrew Sabolic, Bureau Chief of Compliance, Division of Workers’ Compensation, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-4228, (850)413-1600

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting the person listed above.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

69L-6.021 Construction Industry Classification Codes, Descriptions, and Operations Scope of Exemption.

(1) No change.

(a) through (qq) No change.

~~(rr) 5536 Heating and Air Conditioning Duct Work—Shop and Outside—and Drivers~~

(ss) through (bbb) renumbered (rr) through (aaa) No change.

(bbb) 6004 Land Pile Driving

~~(eee) 6003 Pile Driving~~

(ccc) 6006F Marine Pile Driving, Dock & Seawall, Jetty or Breakwater, Dike or Revetment Construction – All Operations to Completion & Drivers

~~(ddd) 6005 Jetty or Breakwater Construction—All Operations to Completion and Drivers~~

(eee) through (iiii) renumbered (ddd) through (hhhh) No change.

(2) No change.

Specific Authority 440.02(8), 440.591 FS. Law Implemented 440.02(8) FS. History—New 10-21-02, Formerly 4L-6.021, Amended 7-4-04, 3-15-06,_____.

Section II Proposed Rules

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Environmental Services

RULE CHAPTER NO.: RULE CHAPTER TITLE:

5E-3 Feed

RULE NO.: RULE TITLE:

5E-3.003 Inspection; Sampling; Analysis; Reporting Rejecting Feed and Feedstuff; Reduced Sampling Requirements; Laboratory Certification/Exemption Requirements and Fees

PURPOSE, EFFECT AND SUMMARY: The purpose of the proposed actions is to amend Rule 5E-3.003, F.A.C. The effect is to harmonize rule definitions to coincide with those listed in the Association of American Feed Control Officials (AAFCO) official publication and to categorize new products within the feed industry; to define an explicit sampling period; and to modify sampling requirements for feed ingredients and mixed feeds to correspond with revised definitions.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding the Statement of Estimated Regulatory Cost or to provide a proposal for a lower cost alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 570.07(23), 580.036(2), 580.065 FS.

LAW IMPLEMENTED: 580.036(2), 580.051, 580.065, 580.036(2), 580.071, 580.091, 580.121, 580.131 FS.

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

DATE AND TIME: July 10, 2006, 3:00 p.m.

PLACE: Flag Credit Union Conference Room, 3115 Conner Blvd., Tallahassee, Florida 32399-1650

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mr. Weldon E. Collier, Chief, Bureau of Feed, Seed, and Fertilizer Laboratories, Division of Agricultural Environmental Services, FDACS, L-29, 3125 Conner Boulevard, Tallahassee, Florida 32399-1650; telephone (850)488-9095

THE FULL TEXT OF THE PROPOSED RULE IS: