

Administrator shall require additional methods of communication such as telephone or email with the insured, if the Administrator determines such action is necessary to facilitate and expedite the mediation process.

- (b) through (e) No change.
- (9) Disbursement of Costs.

(a) The insurer shall pay the mediator’s fee and the Administrator’s fee which shall not exceed \$225. The Department reserves the right to reduce fees based on consumer surveys and cost analysis. All funds due the Department shall be remitted to the Department of Financial Services, Mediation Section, Bureau of Education, Advocacy and Research, 200 East Gaines Street, Tallahassee, Florida 32399-4212, together with a reference to the Department’s file number, the claim number, identification of the parties, date of the mediation, and name of the mediator. These funds will be deposited in the Insurance Regulatory Trust Fund to defer Department costs.

- 1. No change.
- 2. Cancellation Due To Absence. Failure of a party to arrive at the mediation conference within 30 minutes of the conference’s starting time shall be considered an absence. Payment shall be as follows:

a. If the insured fails to appear at the conference, the conference shall be considered to have been held and the insurer must make payment in accordance with paragraph (6)(a) of this rule. If the insured wishes to schedule a new conference after failing to appear, the total cost of mediation for the new conference will be borne by the insured. The new conference shall be rescheduled only upon the insured’s payment of the total cost of the mediation at the rate specified in subsection (6) of this rule, rescheduled upon the insured’s payment of the mediator’s fee for the conference scheduled to take the place of the conference at which the insured failed to appear.

b. If the insurer fails to appear at the conference, the insurer shall make payment for the conference in accordance with paragraph (6)(a) of this rule. If the insurer fails to appear at the conference without good cause, the insurer shall pay the insured’s actual cash expenses incurred in attending the conference and shall pay a second total cost of mediation the mediator’s fee for the rescheduled conference. Good cause here includes severe illness, injury, or other emergency which could not be controlled by the insurer and could not reasonably be remedied by the insurer prior to the conference by providing a replacement representative or otherwise. If an insurer fails to appear at conferences with such frequency as to evidence a general business practice of failure to appear, the Department will report the failure to appear to the Florida Office of Insurance Regulation as a potential violation of Section 626.9541(1)(i)3.c., Florida Statutes. The Florida Office of Insurance Regulation will take such administrative pursuant to

~~Section 624.15, Florida Statutes the insurer shall be subject to penalty, including revocation, suspension, or fine, for violation of Section 626.9541(1)(i), F.S. Such suspension of an insurer’s certificate of authority shall be for a period of 2 years. An administrative fine shall be in the amount of \$2,500 per violation in cases of non-willful violation, and \$20,000 per violation in cases of a knowing and willful violation. The Department will mitigate these penalties based upon the following factors: Solvency of the insurer, best interests of or potential harm to insureds, and willfulness of the violation.~~

~~(b) Any disputes regarding the amount of disbursement of funds shall be resolved by the Department.~~

~~(b)(e) Except as provided in subparagraph (8)(a)3., Any expenses associated with the mediation conference, such as travel, telephone, postage, meals, lodging, facilities, and other related expenses, shall be borne by the party, mediator or other person incurring the expense.~~

- (10) through (12) No change.

The remainder of the rule reads as previously published.

## Section IV Emergency Rules

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

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

### DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

### DEPARTMENT OF FINANCIAL SERVICES

#### Division of Consumer Services

RULE NO.:	RULE TITLE:
69JER09-1	Free Wind Inspections (Repeal of Rule 69J-7.003, F.A.C.)

**SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE:** The proposed emergency rule is necessary because of a lack of funding for free wind inspections under the My Safe Florida Home program, which was created under Section 215.5586, F.S. The emergency rule becomes effective immediately upon filing. There is an immediate danger to the public welfare because of potential homeowner confusion regarding the status of their legal rights under the program which could expose consumers to the risk of unintended

financial obligations. The rule currently states that homeowners will be able to receive a free wind inspection if the homeowner lives in a single-family, site-built, detached home. However, during the 2009 Florida Legislative session, the My Safe Florida Home program was not granted any additional funding to sustain the program. Therefore, there is no current funding to provide free inspections to Florida homeowners. If an Emergency Rule is not put into place repealing Rule 69J-7.003, F.A.C., homeowners will be ostensibly granted a right under the rule that has been abrogated by the Florida Legislature. This emergency rule serves to repeal Rule 69J-7.003, F.A.C.

**REASONS FOR CONCLUDING THAT THE PROCEDURE USED IS FAIR UNDER THE CIRCUMSTANCES:** The Department of Financial Services believes that adopting an emergency rule is essential to protect the public because without the repeal of the existing rule, homeowners may take measures to protect their homes which place them at risk of assuming unintended financial obligations. In the absence of this emergency rule, homeowners may contract with home inspectors while under the misconception that the home inspection will be at no cost to them. Because funding for the home inspection program has been discontinued by the Florida Legislature, state funds are not currently available for this purpose.

**SUMMARY:** This emergency rule repeals Rule 69J-7.003, F.A.C.

**THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS:** Ellen Simon, Chief Counsel, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0333, phone (850)413-4270

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

69JER09-1 (69J-7.003) Free Wind Inspections.

The following rule which would have become effective on July 1, 2009, is hereby repealed.

~~(1) The process to apply for a free wind inspection is for a homeowner to apply on-line at <http://www.mysafe.floridahome.com/NewApplicant.asp> or by telephone at 1(866)513-6734.~~

~~(2) The application for a free wind inspection will be approved if the homeowner lives in a single-family, site-built, detached home. Properties that are ineligible for a free wind inspection include mobile homes, manufactured homes, apartments, condominiums, multi-family dwellings and businesses.~~

~~(3) An application number will be assigned to each applicant. The application number will be utilized for identification purposes for all services in the My Safe Florida Home Program.~~

~~(4) If approved, the homeowner will be contacted by an approved inspection firm or inspector by telephone within three weeks to schedule the free inspection.~~

~~(5) As part of the inspection, the inspector will review any documents the homeowner has on their opening protections (such as shutters, impact resistant windows or garage door). The inspector will also review any documents in regards to roofs under five years old. If the inspector is unable to determine the wind protection rating or building code approval number of the existing shutters or roof shingles, and the homeowner is unable to provide documentation to substantiate this information, then the inspector will not be able to confirm that the homeowner has hurricane-rated opening protection or roof covering.~~

~~(6) The inspector will take photos of the applicant's home during the inspection if the inspector believes that the photos will facilitate the preparation of the inspection report.~~

~~(7) At the end of the inspection, the homeowner will be asked to sign a form verifying an inspection was conducted. After the inspection, the inspector shall send the homeowner a free inspection report within 45 days. The report shall include the following information:~~

~~(a) An outline of improvements that could be made to the home to increase resistance to hurricane wind damage;~~

~~(b) An estimate of how much each improvement would cost to complete;~~

~~(c) An estimate of insurance discounts that may be available, if insurance information was provided when applying for the inspection; and~~

~~(d) A hurricane resistance rating that shows the home's current ability, and future ability with improvements, to withstand hurricanes.~~

Rulemaking Authority 215.5586(6) FS. Law Implemented 215.5586 FS. History--New 1-31-07, Amended 7-1-09, Repealed 7-1-09.

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: July 1, 2009

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

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