

**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 HEALTH**

**Board of Orthotists and Prosthetists**

RULE NO.: 64B14-4.100  
 RULE TITLE: Requirements for Prosthetic or Orthotic Residency or Internship

PURPOSE AND EFFECT: The proposed rule is necessary to incorporate the application form for residency or internship by reference.

SUMMARY: The proposed rule incorporates the application form for residency or internship by reference.

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

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 468.802, 468.803 FS.

LAW IMPLEMENTED: 468.803 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Orthotists and Prosthetists, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE FULL TEXT OF THE PROPOSED RULE IS:

64B14-4.100 Requirements for Prosthetic or Orthotic Residency or Internship.

(1) through (7) No change.

(8) To register for an orthotic or prosthetic internship or residency program, the applicant must submit a completed Registration in an Orthotic or Prosthetic Internship/Residency Program form, number DH-MQA 1133, Revised 11/08, which is hereby incorporated by reference and can be obtained from the board office or from the Board of Orthotist and Prostheti's website at <http://www.doh.state.fl.us/mqa/OrthPros/index.html>.

Rulemaking Specific Authority 468.802, 468.803 FS. Law Implemented 468.803 FS. History—New 11-1-99, Amended 7-2-07,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
 Board of Orthotists and Prosthetists

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Orthotists and Prosthetists

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 13, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 19, 2009

**Section III**  
**Notices of Changes, Corrections and Withdrawals**

**DEPARTMENT OF REVENUE**

**Miscellaneous Tax**

RULE NO.: 12B-5.401  
 RULE TITLE: Temporary Pollutant Importer License Issued Under a Declared Emergency

**NOTICE OF CORRECTION**

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 35, No. 5, February 6, 2009 issue of the Florida Administrative Weekly. Rule 12B-5.401, F.A.C., was previously assigned. In compliance with Rule 1B-30.001, F.A.C., new rule number 12B-5.375, F.A.C., has been assigned to Rule 12B-5.401, F.A.C. This change does not affect the substance of the rule.

**DEPARTMENT OF REVENUE**

**Miscellaneous Tax**

RULE NO.: 12B-8.001  
 RULE TITLE: Premium Tax; Rate and Computation

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 20, May 22, 2009 issue of the Florida Administrative Weekly.

In response to written comments received from the Joint Administrative Procedures Committee, dated June 18, 2009, the provisions of sub-subparagraph a. of subparagraph 2. of paragraph (c) of subsection (3) of Rule 12B-8.001, F.A.C., have been clarified to provide that insurers who have paid an assessment to the Florida Life and Health Insurance Guaranty Association can claim a credit as provided in Section 631.72, F.S. When adopted, that sub-subparagraph will read:

2.a. Effective with the tax return filed for the 1997 taxable year, insurers who have paid an assessment to the Florida Life and Health Insurance Guaranty Association (Association FLHGA) may claim a credit for part of such assessment as provided for in Section 631.72, F.S. the Florida Statutes. Any credits not taken or utilized when available cannot be carried forward.

**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 BUSINESS AND PROFESSIONAL REGULATION**

**Board of Professional Engineers**

RULE NO.: 61G15-37.001  
 RULE TITLE: Performance Standards and Measurable Outcomes

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 19, May 15, 2009 issue of the Florida Administrative Weekly.

Subsection (11) is amended as follows:

(11) FEMC shall maintain the Board's web site at [www.fbpe.org](http://www.fbpe.org). ~~page and update the web page within 14 days of the date the updates go into effect. Administrative complaints shall be posted no later than 30 days after the recommendation by the probable cause panel. All final orders involving active disciplinary cases shall be posted on the web site page, including the final action taken by the Board until the terms of the final order are completed, or until the licensee becomes inactive, retires, relinquishes the license or permits the license to become null and void.~~

Rulemaking Specific Authority 471.038(3)(n)(m) FS. Law Implemented 471.038(3)(m) FS. History--New 11-12-02, Amended 4-8-07, \_\_\_\_\_.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

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**DEPARTMENT OF FINANCIAL SERVICES**

**Division of Consumer Services**

RULE NO.: 69J-166.031  
 RULE TITLE: Mediation of Residential Property Insurance Claims

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 11, March 20, 2009 issue of the Florida Administrative Weekly.

69J-166.031 Mediation of Residential Property Insurance Claims.

(1) Purpose and Scope. This rule implements Section 627.7015, F.S. The program established under this rule is prompted by the critical need for effective, fair, and timely handling of residential property claims. This program is available to all first-party claimants and insurers prior to commencing the appraisal process set forth in their policies or commencing litigation. The program is also available to litigants referred to the Department from Circuit or County court. For claims which have not previously already been mediated under any Department mediation program ~~Rule 69B-166.030, F.A.C.~~, the mediation procedures described in this rule are available to all residential property claims for property which arise from damage occurring in Dade or Monroe Counties as a result of Hurricane Andrew, as well as the unnamed March 13, 1993, storm wherever the property is located in the State of Florida. This rule does not apply ~~program applies to personal lines claims but not to commercial insurance coverages, or to private passenger motor vehicle insurance coverages, or to disputes relating to liability coverages contained in property insurance policies.~~ This program does not apply to policies issued under the National Flood Insurance Program established under the National Flood Insurance Act of 1968. Commercial residential insurance claims can be mediated pursuant to Rule 69J-166.002, F.A.C. Before resorting to these procedures, insureds and insurers are encouraged to resolve claims as quickly and fairly as possible.

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

- (a) through (b) No change.
- ~~(c)~~ "Claim".

1. "Claim" refers to any dispute between the insurer and insured relating to a material issue of fact other than:

- a. through b. No change.

2. Unless the parties agree to mediate a claim involving a lesser amount, a "claim" involves the insured requesting \$500 or more to settle the dispute, or the difference between the positions of the parties is \$500 or more, either of which is notwithstanding of any applicable deductible.

3. A policy must have been in effect at the time of the loss to qualify as a "claim."

- (d) through (h) No change.
- (3) No change.
- ~~(4)~~~~(5)~~ Claim Settlement.

(a) Notification of the right to mediate.

1. Within five days of the insured filing ~~At the time an insured files~~ a first-party claim which falls within the scope of this rule, the insurer shall notify the insured of their right to participate in this program. An insurer is not required to send a

notice of the right to mediate claims when no payment has been made for a covered loss because the insurer concludes the amount of covered loss is less than the insured's deductible.

2. Notification shall be in writing and shall be legible, conspicuous, printed in at least 12-point type, and printed in typeface no smaller than any other text contained in the notice. The first paragraph of the notice shall contain the following statement: "The Chief Financial Officer for the State of Florida has adopted a rule to facilitate the fair and timely handling of residential property insurance claims. The rule gives you the right to attend a mediation conference with your insurer in order to settle any claim you have with your insurer. An independent mediator, who has no connection with your insurer, will be in charge of the mediation conference. You can start the mediation process after receipt of this notice by calling the Department of Financial Services at 1(877)693-5236. The parties will have 21 days from the date of the notice to otherwise resolve the dispute before a mediation hearing can be scheduled."

3. No change.

4. Failure of an insurer to abide by this procedure and to notify the insured as required above will result in the insurer being referred to the Office of Insurance Regulation for administrative action pursuant to Section 624.15, F.S.

(b) No change.

(c) Upon receiving a request for mediation, and after the expiration of the 21 day resolution period, the Administrator insurer shall randomly select from the Department's list a mediator to conduct the mediation conference. The Administrator insurer shall immediately notify the mediator in writing of his or her selection and indicate the names and addresses of the parties and their known representatives, their phone numbers (if known), the Department's file number, the date of the request for mediation, and that the mediation is to occur within 45 days of the request. The mediator will have three business days from the date of notification by the Administrator to accept or reject the selection. If the mediator rejects the selection or fails to accept the selection within three business days, or if a the mediator is disqualified pursuant to paragraph (7)(e), then the Administrator insurer shall randomly select another mediator. For all mediation requests under this rule, the time limits in this section shall not be applicable for two years following the declaration of a disaster. Failure of an insurer to abide by this procedure and to notify the insured as required above shall subject the insurer to revocation, suspension, or fine as set forth in sub-subparagraph (9)(a)2.b. of this rule.

(5)(6) Rejection of Mediation. An insurer may elect to reject mediation in situations where the dispute does not meet the definition of a "claim." If the insurer desires to reject mediation, the insurer shall reference this mediation process and specify in writing to the insured and the administrator the

reason(s) for the rejection. The insurer shall also notify the insured of the insured's right to contest the rejection. To contest the rejection, the insured or the insured's representative must write to the Department at its Mediation Section, Bureau of Consumer Assistance, 200 East Gaines Street, Tallahassee, Florida 32399-0322, within 60 days of the date of the insurer's rejection notification. In the insured's letter contesting the rejection, the insured must specifically state the reasons why the rejection is asserted to be improper. The insurer shall also indicate that the insured should include a copy of the insurer's rejection letter with the insured's letter to the Department. The Department shall determine whether the claim shall be mediated. The parties may elect to voluntarily mediate any dispute regardless of whether the cause of loss or policy status may be in question. In the event that a "claim" falls within the scope of this rule, the insurer shall follow the process set forth in subsection (4) paragraph (5)(b) above.

(6) Mediation Costs. Pursuant to Section 627.7015(3), F.S., the insurer shall bear all of the cost of conducting mediation conferences.

(a) No change.

(b) For two years following the declaration of a disaster, the amounts allocated to the mediator and the Administrator shall be modified by the Department if and to the extent necessary to cover the cost of facilities to conduct the mediation, but in no event will the total cost for mediation exceed those listed in paragraph (6)(a) above.

(c) through (d) No change.

(7) Mediators.

(a) Mediator Approval. The Bureau of Agent and Agency Licensing, Department of Financial Services, shall approve as mediators those persons who meet the qualifications set forth in Section 627.745(3)(b), F.S. Persons wishing to be approved as mediators shall submit their qualifications to the Bureau of Agent and Agency Licensing, Department of Financial Services, 200 East Gaines Street, Tallahassee, FL 32399-0319, on Form DI4-591, "Application for Appointment as a Mediator", which is adopted and incorporated by reference in subsection 69B-211.002(30), F.A.C. For two years following the declaration of a disaster, this program may additionally utilize mediators selected from a panel of circuit court – civil certified mediators approved by the Florida Supreme Court pursuant to the Florida Rules of Certified and Court-Appointed Mediators, which are hereby incorporated into the rule by reference.

(b) through (e) No change.

(8) Mediation Conference.

(a) Location.

1. through 4. No change.

5.6. The mediator will notify the insured, insurer, and the Administrator parties in writing of the exact time, date, and location of the conference. In times of declared disaster, the

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

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### 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