

Notice of Proposed Rule

STATE BOARD OF ADMINISTRATION

RULE NO.: RULE TITLE:

19-8.029: Insurer Reporting Requirements

19-8.030: Insurer Responsibilities

PURPOSE AND EFFECT: The State Board of Administration, Florida Hurricane Catastrophe Fund, seeks to amend Rule 19-8.029, F.A.C., Insurer Reporting Requirements, and to repeal Rule 19-8.030, F.A.C., Insurer Responsibilities, to implement Section 215.555, Florida Statutes.

SUMMARY: In general, Rule 19-8.029, F.A.C., Insurer Reporting Requirements, provides requirements relating to the reporting of exposures and losses, and Rule 19-8.030, F.A.C., Insurer Responsibilities, provides requirements relating to examination of insurer exposures and losses. The proposed amendments to Rule 19-8.029, F.A.C., retitle the Rule as “Insurer Reporting Requirements and Responsibilities,” and consolidate material from both rules in a single revised rule. As amended, Rule 19-8.029, F.A.C., Insurer Reporting Requirements and Responsibilities, adopts the Data Call and other applicable reporting requirements and examination instruction forms for the 2017-2018 contract year, deletes obsolete or duplicative material, and provides additional clarification. Because of the consolidation of material from both rules in a single rule, the repeal of Rule 19-8.030, F.A.C., Insurer Responsibilities, is also proposed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: Upon review of the proposed changes to these two rules and the incorporated forms, the State Board of Administration of Florida has determined that neither rule meets the requirements for ratification by the legislature. The changes to these rules do not have an adverse impact on small business and do not directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within 1 year of implementation. The changes to these rules also do not directly or indirectly have an adverse impact on economic growth, private sector job creation or employment, or private sector investment, business competitiveness or innovation or increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of either rule.

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: 215.555(3), F.S.

LAW IMPLEMENTED: 215.555(2), (3), (4), (5), (6), (7), (10), F.S.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: January 4, 2017, 9:00 a.m. (ET) to 11:00 a.m. (ET).

PLACE: Room 116 (Hermitage Conference Room), 1801 Hermitage Blvd., Tallahassee, Florida 32308.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 7 days before the workshop/meeting by contacting: Donna Sirmons, Florida Hurricane Catastrophe Fund, 1801 Hermitage Boulevard, Tallahassee, FL

32308, (850) 413-1349, donna.sirmons@sbafla.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Donna Sirmons at the number or email listed above.

THE FULL TEXT OF THE PROPOSED RULE IS:

19-8.029 Insurer Reporting Requirements and Responsibilities.

(1) Purpose. This rule specifies certain deadlines and other requirements for insurers that participate in the Florida Hurricane Catastrophe Fund (FHCF) and addresses ~~The purpose of this rule is to incorporate and adopt the annual reporting of insured values and the Loss Reporting Forms, to provide the time and place for submission of this required information and to address confidentiality of~~ certain information provided to the FHCF Florida Hurricane Catastrophe Fund.

(2) Definitions. The definitions in the Reimbursement Contract for the applicable Contract Year also apply to this rule and the forms referenced in this rule. In addition, as used in this rule and the forms referenced in this rule: terms defined below will be capitalized in this rule.

(a) ~~Citizens Property Insurance Corporation or Citizens means the entity formed under Section 627.351(6), F.S., refers to two accounts, the coastal account and the personal lines and commercial lines accounts. Each account is treated by the FHCF as if it were a separate Participant participating insurer with its own reportable exposures, reimbursement premium, retention, and ultimate net loss.~~

(b) ~~Commutation Period means that period of time which is not less than 36 months or more than 60 months after the end of the Contract Year during which the loss occurrence took place. The Reimbursement Contract, adopted and incorporated into Rule 19-8.010, F.A.C., may provide for voluntary commutation earlier than the 36 month period under certain circumstances.~~

(a)(e) ~~“Contract Year” is defined in section 215.555(2), F.S means the time period which begins at 12:00:01 a.m., Eastern Time, on June 1 of each calendar year and ends at 12:00 midnight, Eastern Time, on May 31 of the following calendar year.~~

(d) ~~Covered Policy is defined in Section 215.555(2)(e), F.S., and in the Reimbursement Contract adopted by and incorporated into Rule 19-8.010, F.A.C.~~

(e) ~~Data Call or Florida Hurricane Catastrophe Fund Data Call means the annual reporting of insured values Form FHCF D1A.~~

(f) ~~FHCF or Fund means the Florida Hurricane Catastrophe Fund.~~

(g) ~~Independent Consultant means the independent individual, firm, or organization with which the State Board of Administration of Florida (Board) contracts to prepare the premium formula and any other actuarial services for the FHCF, as determined under the contract with the consultant.~~

(h) ~~Loss Reporting Forms mean the FHCF L1A, FHCF L1B, and FHCF DCL.~~

(i) ~~New Participants means insurers which are granted a certificate of authority by the Department of Financial Services after the beginning of the FHCF’s Contract Year on June 1 and which write Covered Policies, or which already have a certificate of authority and begin writing Covered Policies on or after the beginning of the FHCF’s Contract Year on June 1 and did not or were not required to enter into a contract on June 1 of the Contract Year. A Company that enters into an assumption agreement with Citizens that includes Covered Policies and is effective on or after June 1 and had written no other Covered Policies on or before June 1 is also considered a New Participant.~~

(j) ~~Office of Insurance Regulation means that office within the Department of Financial Services and which was created in Section 20.121(3), F.S.~~

(b) “Insurer” or “Company” means an insurer that is required to enter into a Reimbursement Contract.

(k) WIRE means the Web Insurer Reporting Engine which is the secure web based system used for the reporting of insurer exposure data under the Data Call beginning with the 2014/2015 Contract Year.

(3) Duties of New Participants. A New Participant must designate a coverage level in the Reimbursement Contract, make any required selections therein, and return the fully executed Reimbursement Contract and

applicable Addenda within 30 calendar days after the effective date of its first Covered Policy Reporting of Insurer Exposure Data.

~~(a) No later than September 1 of each Contract Year, authorized insurers and Citizens pursuant to Sections 215.555(5) and 627.351(6), F.S., shall report, online using WIRE, insured values reflecting wind exposure under Covered Policies by zip code and other relevant factors required to reflect each insurer's relative exposure to hurricane loss, valued as of June 30 of the current Contract Year, as required under the Data Call. Such other relevant factors shall be determined by the Independent Consultant consistent with principles of actuarial science and in conjunction with the development of the premium formula.~~

~~(4)(b) Confidentiality of reports containing insured values under Covered Policies. Section 215.557, F.S., enacted for the express purpose of protecting trade secret and proprietary information submitted to the FHCF by a Company participating insurers, protects the confidentiality of reports of insured values under Covered Policies by ZIP Code submitted pursuant to section 215.555, F.S., regardless of whether the information contained in such reports appears in the Data Call or in any other document information of the type submitted in the Data Call, examination workpapers, and examination reports. Such information is not subject to the provisions of sSection 119.07(1), F.S., or sSection 24(a), Article I of the Florida State Constitution. In addition, sections 812.081 and 815.045, F.S., provide for confidentiality of trade secret information. Confidential information data and trade secrets reported to the FHCF are protected to the extent allowed by law.~~

~~(c) Reporting Regarding Insurers Withdrawing from the State or Discontinuing the Writing of All Kinds of Insurance Prior to June 30 of Each Year. Insurers which discontinue writing insurance in Florida and have no remaining Covered Policy exposure as of June 30 of each Contract Year are required to petition for exemption from the Fund pursuant to Rule 19-8.012, F.A.C. Nothing in this rule shall be construed to conflict with the requirements of Section 624.430(1), F.S.~~

~~(d) Online reporting, using WIRE, is due by September 1 (or by the alternative date applicable to New Participants as outlined in subsection (4) below); this means that the report shall be received by the Board no later than 4:00 p.m., Eastern Time, on September 1. If September 1 is a Saturday, Sunday or legal holiday, then the applicable due date will be the day immediately following September 1 which is not a Saturday, Sunday or legal holiday. Reports sent to the FHCF Administrator in Minneapolis, Minnesota, will be returned to the sender. Submissions in WIRE must be electronically signed off on by 4:00 p.m., Eastern Time, on the applicable due date by two officers registered in the system or the submission will be late.~~

~~(5)(4) Data Call fForms. For the 2017/2018 Contract Year, the reporting of Company exposure data shall be in accordance with Form FHCF-D1A, "Florida Hurricane Catastrophe Fund 2017 Data Call," rev. xx/17, <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>, which is hereby adopted and incorporated by reference into this rule.~~

~~(a) For the 2012/2013 Contract Year, the reporting shall be in accordance with Form FHCF D1A, "Florida Hurricane Catastrophe Fund 2012 Data Call," rev. 01/12, <http://www.flrules.org/gateway/reference.asp?No=Ref-01193> hereby adopted and incorporated by reference into this rule. The form may be obtained from the Fund's Administrator at the address stated in subsection (8) below. A new participant writing covered policies on or after June 1 but prior to December 1, shall report its actual exposure as of December 31 of the Contract Year on or before March 1 of the Contract Year, to the Administrator. For the 2012/2013 Contract Year, a New Participant had the option of reporting its actual exposure as of November 30 of the Contract Year on or before February 1 of the Contract Year.~~

~~(b) For the 2013/2014 Contract Year, the reporting shall be in accordance with Form FHCF D1A, "Florida Hurricane Catastrophe Fund 2013 Data Call," rev. 02/13, <http://www.flrules.org/Gateway/reference.asp?No=Ref-02333>, hereby adopted and incorporated by reference into this rule. The form may be obtained from the Fund's Administrator at the address stated in subsection (8) below. A New Participant writing covered policies on or after June 1 but prior to December 1, shall report its actual exposure as of November 30 of the Contract Year on or before February 1 of the Contract Year to the Administrator.~~

~~(c) For the 2014/2015 Contract Year, the reporting shall be in accordance with Form FHCF D1A, "Florida Hurricane Catastrophe Fund 2014 Data Call," rev. 04/14, <http://www.flrules.org/Gateway/reference.asp?No=Ref->~~

03967, hereby adopted and incorporated by reference into this rule. The form may be obtained from the Fund's Administrator at the address stated in subsection (8) below. A New Participant writing Covered Policies on or after June 1 but prior to December 1, shall report its actual exposure as of November 30 of the Contract Year on or before February 1 of the Contract Year.

~~(d) For the 2015/2016 Contract Year, the reporting shall be in accordance with Form FHCF D1A, "Florida Hurricane Catastrophe Fund 2015 Data Call," rev. 05/15, <http://www.flrules.org/Gateway/reference.asp?No=Ref-05322>, hereby adopted and incorporated by reference into this rule. A New Participant writing Covered Policies on or after June 1 but prior to December 1, shall report its actual exposure as of November 30 of the Contract Year on or before February 1 of the Contract Year.~~

~~(e) For the 2016/2017 Contract Year, the reporting shall be in accordance with Form FHCF D1A, "Florida Hurricane Catastrophe Fund 2016 Data Call," rev. 03/16, <http://www.flrules.org/Gateway/reference.asp?No=Ref-06500>, hereby adopted and incorporated by reference into this rule. A New Participant writing Covered Policies on or after June 1, but prior to December 1, shall report its actual exposure as of November 30 of the Contract Year on or before February 1 of the Contract Year.~~

~~(5) Loss Reimbursement Reporting Requirements.~~

~~(a) As directed by the Board, after a covered event occurs, insurers shall report all their estimated ultimate net losses (as defined in the Reimbursement Contract, adopted and incorporated into Rule 19 8.010, F.A.C.) for Covered Policies on the Form FHCF L1A, "Florida Hurricane Catastrophe Fund Interim Loss Report," adopted in subsection (6) herein. The Board may request subsequent Interim Loss Reports. Prompt reporting in the format requested will aid the Board in determining whether to seek additional sources of funds to pay for reimbursable losses. The losses reported on the Interim Loss Report are expected to result from a good faith effort, using best business practices for the insurance industry, on the part of the insurer to report as accurately as possible. Preliminary reports will not be binding.~~

~~(b) Insurers shall report their ultimate net losses for each loss occurrence on the Form FHCF L1B, "Florida Hurricane Catastrophe Fund Proof of Loss Report," adopted in subsection (6) herein. Reimbursements by the Fund will be made on the basis of the Proof of Loss Report. While a Company may submit a Proof of Loss Report requesting reimbursement at any time following a loss occurrence, all Companies shall submit a mandatory Proof of Loss Report for each loss occurrence no earlier than December 1 and no later than December 31 of the Contract Year during which the Covered Event(s) occurs using the most current data available, regardless of the amount of Ultimate Net Loss or the amount of loss reimbursements or advances already received. After the mandatory December Proof of Loss Report, quarterly Proof of Loss Reports are required as outlined in Article X of the Reimbursement Contract.~~

~~(c) Companies must submit the FHCF L1A, Interim Loss Report, and FHCF L1B, Proof of Loss Report, electronically using the FHCF Online Claims System (available at www.sbafla.com/fhcf under Insurer Information, Online Claims). The Online Claims System will require an online signoff of one executive officer for an Interim Loss Report submission and two executive officers for a Proof of Loss Report submission. Officers performing the signoffs must be registered users. Advance registration is required to use the Online Claims System; instructions are included within the system.~~

~~(d) When required, Companies must submit a Detailed Claims Listing to support the losses reported in the FHCF L1A, Interim Loss Report (excluding incurred but not reported losses) and the FHCF L1B, Proof of Loss Report. The requirements and instructions for the Detailed Claims Listing are outlined in Form FHCF DCL, "Detailed Claims Listing Instructions," adopted in subsection (6) herein, for the applicable Contract Year. The Detailed Claims Listing, when required, must be uploaded through the FHCF Online Claims System (available at www.sbafla.com/fhcf under Insurer Information, Online Claims) at the same time as the Company's Proof of Loss Report submission.~~

~~(6) Loss Reporting Forms.~~

~~(a) For the 2017/2018 Contract Year, the reporting of estimated Ultimate Net Loss shall be in accordance with Form FHCF-L1A, "Contract Year 2017 Interim Loss Report, Florida Hurricane Catastrophe Fund (FHCF)," rev.~~

XX/17, <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>, which is hereby adopted and incorporated by reference into this rule.

(b) For the 2017/2018 Contract Year, the reporting of Ultimate Net Loss shall be in accordance with Form FHCF-L1B, "Contract Year 2017 Proof of Loss Report, Florida Hurricane Catastrophe Fund (FHCF)," rev. XX/17, <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>, which is hereby adopted and incorporated by reference into this rule.

(c) For the 2017/2018 Contract Year, the applicable Detailed Claims Listing Instructions is Form FHCF-DCL, "Contract Year 2017 Detailed Claims Listing Instructions," rev. XX/17, <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>, which is hereby adopted and incorporated by reference into this rule.

~~(a) For the 2015/2016 Contract Year, the applicable Interim Loss Report is the "Contract Year 2015 Interim Loss Report, Florida Hurricane Catastrophe Fund (FHCF)," FHCF L1A, rev. 05/15, <http://www.flrules.org/Gateway/reference.asp?No=Ref-05323>, which is hereby adopted and incorporated by reference into this rule. The applicable Proof of Loss Report is the "Contract Year 2015 Proof of Loss Report, Florida Hurricane Catastrophe Fund (FHCF)," FHCF L1B, rev. 05/15, <http://www.flrules.org/Gateway/reference.asp?No=Ref-05329>, which is hereby adopted and incorporated by reference into this rule. The applicable Detailed Claims Listing Instructions is the "Contract Year 2015 Detailed Claims Listing Instructions," FHCF DCL, rev. 05/15, <http://www.flrules.org/Gateway/reference.asp?No=Ref-05325>, which is hereby adopted and incorporated by reference into this rule.~~

~~(b) For the 2016/2017 Contract Year, the applicable Interim Loss Report is the "Contract Year 2016 Interim Loss Report, Florida Hurricane Catastrophe Fund (FHCF)," FHCF L1A, rev. 03/16, <http://www.flrules.org/Gateway/reference.asp?No=Ref-06501>, which is hereby adopted and incorporated by reference into this rule. The applicable Proof of Loss Report is the "Contract Year 2016 Proof of Loss Report, Florida Hurricane Catastrophe Fund (FHCF)," FHCF L1B, rev. 03/16, <http://www.flrules.org/Gateway/reference.asp?No=Ref-06502>, which is hereby adopted and incorporated by reference into this rule. The applicable Detailed Claims Listing Instructions is the "Contract Year 2016 Detailed Claims Listing Instructions," FHCF DCL, rev. 03/16, <http://www.flrules.org/Gateway/reference.asp?No=Ref-06503>, which is hereby adopted and incorporated by reference into this rule.~~

(7) Examination.

(a) Advance examination record requirements. Within 30 days after the date of the request for such information, a Company must provide the FHCF with the records indicated in the applicable Contract Year's "Exposure Examination Advance Preparation Instructions" or in the applicable Contract Year's "Loss Reimbursement Examination Advance Preparation Instructions." The FHCF may grant an extension of 30 days if the Company can show that the need for the additional time is due to circumstances beyond its reasonable control. For the 2017/2018 Contract Year, the applicable exposure examination instructions form is the "Florida Hurricane Catastrophe Fund (FHCF) Exposure Examination – Contract Year 2017 Advance Preparation Instructions," FHCF-EAP1, rev. XX/17, <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>, which is hereby adopted and incorporated by reference into this rule. The applicable loss examination instructions form is the "Florida Hurricane Catastrophe Fund (FHCF) Loss Reimbursement Examination – Contract Year 2017 Advance Preparation Instructions," FHCF-LAP1, rev. XX/17, <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>, which is hereby adopted and incorporated by reference into this rule.

(b) Response to the FHCF examination report. Within 30 days from the date of the letter accompanying the examination report, a Company must provide a written response to the FHCF. The response must indicate whether or not the Company agrees with the recommendations of the examination report. If the Company disagrees with the examination findings, the reason for the disagreement must be outlined in the response, and the Company must provide supporting information for the objection. The FHCF may grant an extension of 30 days if the Company can show that the need for the additional time is due to circumstances beyond its reasonable control. No response is required if the examination report does not include any findings or recommendations.

(c) Consequences for failure to meet the requirements contained in the FHCF-EAP1, "Exposure Examination

Advance Preparation Instructions” or the FHCF-LAP1, “Loss Reimbursement Examination Advance Preparation Instructions.” In addition to other penalties or consequences, the FHCF has the authority, pursuant to section 215.555(4)(f), F.S., to require that the Company pay for the following services under the circumstances specified herein:

1. If the Company is responsible for the delay of an examination, the inability to conduct an examination as scheduled, or the inability to complete an examination, the Company shall be required to reimburse the FHCF for all the usual and customary expenses connected to such delay, cancellation, or incompleteness.

2. If the FHCF finds any Company’s records or other necessary information to be inadequate or inadequately posted, recorded, or maintained, the FHCF may employ experts to reconstruct, rewrite, record, post, or maintain such records or information, at the expense of the Company being examined.

3. A Company required to reimburse the FHCF for costs as required in subparagraphs 1. and 2. is liable for interest on the amount owed to the FHCF from the date the FHCF pays such expenses until the date payment from the Company is received. The applicable interest rate will be the average rate earned by the SBA for the FHCF for the first four months of the current Contract Year plus 5%. The payment of reimbursements or refunds by the FHCF to the Company will be offset by any amounts owed by that Company to the FHCF under this paragraph.

~~(8)(7)~~ Company ~~contact information.~~ Companies must submit Form FHCF C-1, Company Contact Information, rev. ~~XX/17~~ 04/14, <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXXX>, which is hereby adopted and incorporated by reference into this rule, by March 1 preceding each Contract Year to the FHCF Administrator, Paragon Strategic Solutions Inc., 8200 Tower, 5600 West 83rd Street, Suite 1100, Minneapolis, Minnesota 55437. A New Participant must submit Form FHCF C-1 within 30 calendar days ~~after~~ ~~of~~ writing its first Covered Policy. This form must be updated by the Company as the information provided thereon changes. The FHCF shall have the right to rely upon the information provided by the Company to the FHCF on this form until receipt by the FHCF of a new properly completed and notarized Form FHCF C-1 from the Company.

(9) Deadlines. If any deadline provided for herein falls on a Saturday, Sunday or on a legal holiday, then the applicable due date will be the first business day immediately following the Saturday, Sunday or legal holiday.

~~(10)(8)~~ All the forms adopted and incorporated by reference in this rule may be obtained from the FHCF website at www.sbafla.com/fhcf or by contacting the ~~Administrator~~, Florida Hurricane Catastrophe Fund Administrator, Paragon Strategic Solutions Inc., 8200 Tower, 5600 West 83rd Street, Suite 1100, Minneapolis, MN 55437, ~~or from the FHCF website at www.sbafla.com/fhcf.~~

Rulemaking Authority 215.555(3) FS. Law Implemented 215.555(2), (3), (4), (5), (6), (7), (15), 627.351(6), FS. History—New 5-17-99, Amended 6-19-00, 6-3-01, 6-2-02, 11-12-02, 5-13-03, 5-19-04, 8-29-04, 5-29-05, 5-10-06, 5-8-07, 6-8-08, 3-30-09, 8-2-09, 3-29-10, 8-8-10, 7-20-11, 5-22-12, 3-17-13; 4-24-14, 5-12-15, 3-13-16, XX-XX-17.

19-8.030 Insurer Responsibilities.

Rulemaking Authority 215.555(3) FS. Law Implemented 215.555, 627.351(6), FS. History—New 5-13-03, Amended 5-19-04, 5-29-05, 5-10-06, 5-8-07, 8-13-07, 6-8-08, 3-30-09, 3-29-10, 8-8-10, 7-20-11, 5-22-12, 3-17-13, 4-24-14, 5-12-15, 3-13-16, Repealed XX-XX-17.

NAME OF PERSON ORIGINATING PROPOSED RULE: Anne T. Bert, FHCF Chief Operating Officer, State Board of Administration of Florida.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Trustees of the State Board of Administration of Florida.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 06, 2016

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: November 4, 2016