

NOTICE OF RULE DEVELOPMENT

DEPARTMENT OF FINANCIAL SERVICES

Division of Insurance Agents and Agency Services

RULE NO.:	RULE TITLE:
69B-213.010	Purpose and Scope
69B-213.020	Definitions
69B-213.040	Who May Appoint a Customer Representative
69B-213.050	Limits on Lines and Products the Customer Representative May Handle
69B-213.060	Appointment of Customer Representative and Designation of Supervising Agent
69B-213.070	Termination of Appointment or Supervision
69B-213.080	Duties of Appointing Agent
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69B-213.100	Duties of Designated Supervising Agent
69B-213.110	Customer Representative's Duties
69B-213.120	Duty to Supervise Explained
69B-213.130	The Customer Representative's Authority; Limitations

PURPOSE AND EFFECT: The proposed amendments will update the rules in Chapter 69B-213, F.A.C., to conform with current statutory provisions in the Florida Insurance Code.

SUBJECT AREA TO BE ADDRESSED: Customer representatives.

RULEMAKING AUTHORITY: 624.308, 626.7353(3) FS

LAW IMPLEMENTED: 624.307(1), 626.015, 626.112, 626.161, 626.172, 626.451, 626.471, 626.561(2), 626.592, 626.734, 626.7351, 626.7352, 626.7353, 626.7354, 626.747, 626.748 FS

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: February 22, 2012 @ 1:00 P.M.

PLACE: Room 142, Larson Building, 200 E. Gaines Street, Tallahassee, FL
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 5 days before the workshop/meeting by contacting Ray Wenger @ (850) 413-5605 or Ray.Wenger@MyFloridaCFO.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 DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Ray Wenger, Bureau of Investigations, Division of Insurance Agents and Agency Services, 200 E. Gaines Street, Tallahassee, FL 32399-0320 (850) 413-5605 or Ray.Wenger@MyFloridaCFO.com. The text of the proposed rules is also available on the Department's website @

<http://www.MyFloridaCFO.com/LegalServices/ruleHearing/>

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

69B-213.010 Purpose and Scope.

(1) The purpose of this rule chapter is to set forth Department policy and statutory interpretation, and implement the law regarding customer representatives.

(2) These rules shall apply to all individuals licensed by the Department as customer representatives and as limited customer representatives; to agents and agencies who appoint customer representatives; to agents who are designated to supervise customer representatives appointed by an agency; and to agents who use the services of customer representatives who they do not supervise.

(3) A duly licensed and appointed limited customer representative may, subject to the specific limits set out in this rule chapter, perform only private passenger automobile insurance coverage functions.

~~(4) Nothing in this rule chapter shall prevent or relieve any licensed insurance agent from their obligations under Sections 626.735 and 626.747, Florida Statutes, or any other provision of the Florida Insurance Code, or rules or orders of the Department.~~

Rulemaking Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.072, 626.7351, 626.7352, 626.7353, 626.7354 FS. History—New 12-19-93, Formerly 4-213.010, Amended _____.

69B-213.020 Definitions.

For purposes of this rule chapter the following definitions shall apply.

~~(1) "Designated supervising agent" refers only to the agent designated by the agency to supervise the customer representative which the agency has appointed.~~

(1) "Customer Representative" means an individual appointed by a general lines agent or general lines agency to assist that agent or agency in transacting the business of insurance from the office of that agent or agency. Holders of a customer representative license may transact insurance on any property and casualty product, as well as health insurance if their supervising agent is appointed for health insurance.

(2) "Limited Customer Representative" means a person appointed by a general lines agent or agency to assist in transacting only the business of private passenger motor vehicle insurance from the office of that agent or agency. A limited customer representative is subject to the Florida Insurance Code in the same manner as a customer representative, unless otherwise specified.

(3) (2) "Supervise" or "supervision" means to have charge and direction of, to direct course and to oversee details, to regulate with authority, to manage, to have or to exercise the charge and oversight of, to oversee with power of direction, to take care of with authority; and includes the duty to review and correct errors of persons over whom supervision is to be exercised.

(4) (3) "Supervising agent" includes: both

(a) the appointing agent in instances where a customer representative is appointed by an agent, ~~or~~ and

(b) an agent designated by an agency to supervise a customer representative in instances where an agency appoints a customer representative.

(5) "Designated supervising agent" means an agent designated by an agency to supervise the customer representative or representatives which the agency has appointed.

Rulemaking Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.015, 626.072, 626.7351, 626.7352, 626.7353, 626.7354 FS. History–New 12-19-93, Formerly 4-213.020, Amended _____.

69B-213.040 Who May Appoint a Customer Representative.

(1) A customer representative may be appointed only by one of the following:

(a) A person holding a Florida resident general lines agent license, that is, an agent holding a type and class of licensure referred to as a 2-20;

(b) A general lines insurance agency; ~~or~~

~~(c) A surplus lines agent, if the surplus lines agent obtained surplus lines licensure based upon licensure as a general lines 2-20 agent. If the surplus lines agent obtained such licensure upon grounds of being a managing general agent, that surplus lines agent may not appoint a customer representative.~~

(2) The phrase "general lines insurance agency" is interpreted by the Department as any location where an agent is engaged in the business of general lines insurance and it includes to include only agencies licensed or registered as required by Section 626.112(7)(a), F.S., where the "primary agent" (pursuant to Section 626.592, Florida Statutes) where the "supervising agent" holds a Florida resident 2-20 general lines license. An "agency" is defined, as set forth in Section 626.592(3), Florida Statutes, as "any location where an agent is engaged in the business of insurance."

Rulemaking Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.072, 626.112, 626.172, 626.7351, 626.7352, 626.7353, 626.7354 FS. History–New 12-19-93, Formerly 4-213.040, Amended _____.

69B-213.050 Limits on Lines and Products the Customer Representative May Handle.

(1) A customer representative may only perform customer representative duties as to the specific general lines insurance products which their supervising agent is actually then appointed by an insurer to handle, or which their supervising agent is authorized to handle under exchange of business laws or Joint Underwriting Associations or Workers' Compensation Insurance Plan rules and contracts. Where the customer representative is employed in an agency with two or more agents, the customer representative may perform customer representative duties for agents other than the supervising agent regarding any general lines insurance product for which such agent is actually then appointed by an insurer to handle, or which such agent is authorized to handle under exchange of business laws or joint underwriting associations or Workers' Compensation Insurance Plan rules and contracts; provided, however, the supervising agent shall remain accountable and responsible for the acts of the customer representative.

~~(2) Where the customer representative's supervising agent is a surplus lines agent as set forth in paragraph 69B-213.040(1)(c), F.A.C., the customer representative may perform customer representative duties regarding any property, casualty, health, or surety coverages (but not life coverages or annuities) which the supervising agent could place with a surplus lines carrier.~~

(2) (3) A customer representative license does not grant the customer representative any authority to transact life insurance or annuities. A customer representative may only handle duties relating to life insurance and annuities if

such duties may be performed by unlicensed persons, as provided in Rule Chapter 69B-222, F.A.C., and the Florida Insurance Code, or if the customer representative also holds a life agent license. This applies even though the supervising agent holds a life agent license in addition to a general lines license.

Rulemaking Specific Authority 624.308 FS. Law Implemented 624.307(1), ~~626.072~~, 626.7351, 626.7352, 626.7353, 626.7354 FS. History–New 12-19-93, Formerly 4-213.050 , Amended _____.

69B-213.060 Appointment of Customer Representative and Designation of Supervising Agent.

(1) Appointments of customer representatives are made pursuant to Section 626.451, Florida Statutes.

(2) No customer representative may perform customer representative duties until an appointment is in effect.

(3) No appointment of a customer representative is effective until a properly executed electronic appointment form, accompanied by payment of the appointment fee, is actually received by the Department.

~~(4) Customer Representatives are appointed using Form DFS-H2-501, as adopted in Rule Chapter 69B-211, F.A.C., which may be obtained from the Department's Bureau of Agent & Agency Licensing.~~

~~(4)~~ (5) A designated supervising agent is designated by completing Form DFS-H2-1124, "Designation of Supervising Agent Form," rev. 10/02 ~~8/93~~, which is hereby ~~adopted~~ and incorporated by reference, and is obtainable from the Bureau of Agent & Agency Licensing at <http://MyFloridaCFO.com/Agents/Licensure/Forms/index.htm>. If appointment is by an agency, the agent in charge ~~primary agent~~, as specified in Section 626.747 ~~626.592~~, Florida Statutes, shall ensure completion of Form DFS-H2-1124. Form DFS-H2-1124 shall be maintained in the appointing agent or agency's records, and must be produced upon Department request. The designated supervising agent must always be a licensed and appointed general lines 2-20 agent. The designated supervising agent must also be located at the same physical site as the customer representative.

~~(5)~~ (6) A customer representative's designated supervising agent need not be the agency's agent in charge named "~~primary agent~~" under Section 626.747 ~~626.592~~, Florida Statutes.

Rulemaking Specific Authority 624.308, 626.7353(3) FS. Law Implemented 624.307(1), 626.161, ~~626.072~~, 626.7351, 626.7352, 626.7353, 626.7354, 626.747 FS. History–New 12-19-93, Formerly 4-213.060, Amended _____.

69B-213.070 Termination of Appointment or Supervision.

(1) The appointment of a customer representative shall be terminated in accordance with Section 626.471, Florida Statutes, and the statutes cited therein.

(2) No person shall be, act as, or advertise or hold him or herself out to be a customer representative, unless currently licensed and appointed.

(3) The appointing agent or agency, and the designated supervising agent remains accountable and responsible for the acts of the customer representative until such time as the Department receives proper notice of termination of the appointment or notice of termination of supervision, as the case may be, and this

notwithstanding that the customer representative was expressly told by the supervising agent or agency to cease all customer representative duties. Until such time as proper notice is received by the Department, the public, calling the Department for verification of the customer representative's licensure and appointment will be told that the customer representative is licensed and is authorized to represent that agent or agency. Failure to abide by the provisions of this subsection do not invalidate the authority of the customer representative to bind the agent or the agency to insurance contracts.

(4) Method for Notifying Department of Termination of Customer Representative Appointment.

(a) Oral notice of appointment termination is never effective and shall not be accepted by the Department. The termination of appointments of customer representatives by agents and agencies shall be executed electronically ~~by use of either Form DFS-H2-39, as adopted in Rule Chapter 69B-211, F.A.C., which may be obtained from the Bureau of Agent & Agency Licensing, or by a written notice directed to the Department's Bureau of Agent & Agency Licensing. Regardless of which method is used, a copy of the termination document shall be supplied to the customer representative at the same time it is supplied to the Department.~~

(b) When an appointment is terminated by the customer representative, the customer representative must provide written notice to the Department. ~~The~~ notice shall:

1. Be signed and dated by the supervising agent, ~~by the appointing agent where the appointment was by an agent, or by the primary agent of the agency where the appointment was by an agency;~~ customer representative
2. State the effective date of termination of appointment;
3. Give the full name, address, ~~and~~ phone number, and license identification number of the appointing agent or agency;
4. ~~State the appointing agent's license identification number; as to agency appointments, and the agency federal employer identification number;~~
4. ~~5.~~ Contain a statement to the clear effect that as of the effective date of the notice that the appointment of the customer representative identified is terminated;
5. ~~6.~~ State the full name, license identification number of the customer representative.
6. ~~7.~~ State the reason for the termination of appointment.
7. ~~8.~~ Be sent to the Department of Financial Services, Bureau of Agent & Agency Licensing, 200 East Gaines St., Tallahassee, FL 32399-0319 ~~0300~~.

(5) Procedure for Termination of Status as Designated Supervising Agent.

(a) The status of an agent as designated supervising agent for a customer representative may be terminated either by use of Form DFS-H2-39, obtainable from the Bureau of Agent & Agency Licensing, or by written notice, at least one of which shall be available for Department inspection at all times in the agent or agency records. The supervisory status shall be terminated by either the supervising agent or the agency, and may be unilateral. If the status is terminated by the supervising agent, the supervising agent shall supply the agency with a copy of the filing; and if filed by the agency, the agency shall supply a copy to the agent. Regardless of which method is used or who files, the party filing same shall supply a copy of the termination notice to the customer representative.

(b) When the supervising status is terminated by written notice rather than

Form DFS-H2 ~~DF-39~~, the notice must comply with the following:

1. If filed by the designated supervising agent, the notice shall be signed and dated by the designated supervising agent; if filed by the agency, it shall be signed and dated by the agency's primary agent.

2. The notice shall state the effective date of termination of supervision;

3. The notice shall give the full name, address, and phone number of the agency;

4. The notice shall identify and state the full name of the designated supervising agent being relieved of that status, and shall supply his or her license identification number.

5. The notice shall contain a statement, to the clear effect that as of the effective date of the notice that [agent's name] is no longer the designated supervising agent for the customer representative identified in the notice.

6. The notice shall identify and state the full name, and license identification number of the customer representative.

7. The notice shall be maintained in the appointing agent or agency's records and must be produced upon Department request.

(6) Fees. No fee is required to terminate an appointment, or to terminate status as a designated supervising agent.

Rulemaking Specific Authority 624.308 FS. Law Implemented 624.307(1), ~~626.072~~, 626.112, ~~626.161~~, 626.471, 626.561(2), 626.7351, 626.7352, 626.7353, 626.7354, 626.748 FS. History—New 12-19-93, Formerly 4-213.070, Amended

69B-213.080 Duties of Appointing Agent.

An agent who appoints a customer representative incurs the following obligations, in addition to those otherwise set out in this rule chapter:

(1) In instances where the appointing agent and designated supervising agent are the same person, the appointing agent must supervise the customer representative as described in subsection 69B-213.020(3) ~~(2)~~, F.A.C. The supervisory role may not be delegated to anyone unless delegation is to a licensed and appointed agent who has been designated as the supervising agent pursuant to subsection 69B-213.060(4) ~~(5)~~, F.A.C. Supervisory duties, unless delegated to a designated supervising agent, remain with the appointing agent even when the customer representative is performing customer representative services for other agents or staff within the agency.

(2) The agent must, pursuant to subsection 69B-213.120(4), F.A.C., take reasonable steps to assure that the customer representative does not exceed the allowable scope of the customer representative's licensure, duties and authority.

Rulemaking Specific Authority 624.308 FS. Law Implemented 624.307(1), ~~626.072~~, 626.734, 626.7351, 626.7352, 626.7353, 626.7354 FS. History—New 12-19-93, Formerly 4-213.080, Amended

69B-213.090 Duties of Appointing Agency.

(1) Agency Appointment of Customer Representative, In General.

(a) It is the agency that is the employer of the customer representative in terms of payroll. In such situations the agency needs the procedural ability when the designated supervising agent quits or is terminated, to identify and designate in the

agency records another general lines agent who assumes the responsibility to undertake the supervision of the customer representative, without the parties involved having to make an entirely new appointment of the customer representative.

(b) The appointment of a customer representative by an agency does not allow or grant a greater independence or autonomy to the customer representative, or expand the scope of the customer representative's role, as compared to customer representatives appointed directly by an agent. The customer representative is an assistant to a designated supervising agent. An agency cannot transact insurance in the sense of binding coverages, advising clients or applicants, or similar activity; only a licensed agent can perform those tasks, or licensed customer representatives working under the supervision of the licensed and appointed agent.

(2) There is an affirmative duty on the appointing agency to assure that there is always a licensed and appointed general lines agent designated as specified in Rule 69B-213.060, F.A.C, on Form DFS-H2-1124, "Designation of Supervising Agent Form," who has agreed to supervise the customer representative, and who is in fact supervising the customer representative in accordance with the supervisory requirements set out in this rule chapter.

(3) When an agency first appoints a customer representative, it must designate on Form DFS-H2-501 to the Department in writing a general lines agent in good standing who will supervise the customer representative. This agent must sign the appointment paperwork submitted to the Department, thereby accepting and acknowledging the responsibility for the supervision of the customer representative.

(4) The appointing agency shall immediately specify in agency records any change in the identity of the agent actually performing customer representative supervisory duties regarding any customer representative appointed by an agency. The appointing agency may change the designated supervising agent at any time provided notice of such is maintained in the agency's records. The appointing agency must designate a new designated supervising agent whenever the prior designated supervising agent ceases in fact to properly perform the supervisory duties; or the appointing agency shall terminate the appointment.

(a) A new designated supervising agent is established by using the provisions set forth in subsection 69B-213.060(4) ~~(5)~~, F.A.C.

(b) Whenever the designated supervising agent of record is no longer in fact supervising the customer representative, that agency shall immediately require the customer representative to cease performing all customer representative duties, until a new designated supervising agent is properly designated. The appointing agent continues to be accountable and liable for the acts of that customer representative during such period until a new designated supervising agent is established.

(5) It is the responsibility of the primary agent for the agency to see that the agency complies with all requirements imposed upon the agency by this rule chapter.

(6) The agency shall notify the Department of the termination of all customer representative appointments, according to procedures set forth in this rule chapter within 20 calendar days of the termination.

Rulemaking Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.161, 626.451, 626.471, ~~626.072, 626.592,~~ 626.7351, 626.7352, 626.7353, 626.7354

FS. History–New 12-19-93, Formerly 4-213.090, Amended _____.

69B-213.100 Duties of Designated Supervising Agent. (Technical)

(1) The designated supervising agent is jointly and severally accountable and responsible with the agency to the Department, for the acts and representations of the customer representative.

(2) An agent who is designated to supervise a customer representative thereby incurs the following obligations, in addition to those otherwise set out in this rule:

(a) The agent must supervise the customer representative, as described in this rule. This duty shall not be delegated. This duty remains on the designated supervising agent even when the customer representative is performing customer representative services for other agents within the agency.

(b) The agent must assure that the customer representative does not exceed the allowable scope of the customer representative's licensure, duties and authority.

(3) A designated supervising agent may terminate his or her status as designated supervising agent, at any time, as explained in this rule chapter.

Specific Authority 624.308 FS. Law Implemented 624.307(1), ~~626.072~~, 626.734, 626.7351, 626.7352, 626.7353, 626.7354 FS. History–New 12-19-93, Formerly 4-213.100.

69B-213.110 Customer Representative's Duties. (Technical)

(1) A customer representative shall comply with the lawful instructions and directions of the supervising agent as well as all applicable provisions of the Florida Insurance Code, and rules and orders of the Department.

(2) A customer representative has a duty to ensure that their appointment and supervision is in compliance with this rule chapter, with other rules of the Department, and with the Insurance Code.

(3) The customer representative shall exercise great care in not going beyond the licensure, training, expertise and experience of the customer representative. In the event of uncertainty as to whether the customer representative is competent to advise or perform regarding any insurance matter, the uncertainty shall be resolved in favor of referring the matter to the supervising agent.

Specific Authority 624.308 FS. Law Implemented 624.307(1), ~~626.072~~, 626.7351, 626.7352, 626.7353, 626.7354, 626.747 FS. History–New 12-19-93, Formerly 4-213.110.

69B-213.120 Duty to Supervise Explained. (Technical)

(1) The supervising agent shall supervise the customer representative concerning work performed within the scope of the customer representative licensure. This duty shall not be delegated. The supervision system need not be reduced to writing, but the supervising agent shall be able upon request to explain to the Department the supervisory system.

(2) Throughout the supervisory relationship the supervising agent shall comply with the following parameters:

(a) The supervising agent should interact in person with the customer representative daily. Occasional periods during which the agent is sick or on vacation, or conducting insurance business out of the office, will be considered

regarding the enforcement of this provision.

(b) The supervising agent should periodically review samples of all areas of the customer representative's work, in such amounts and with such frequency as to provide reasonable assurance that repetitive errors in the customer representative's work will be noted and corrected by the supervising agent at an early stage.

(c) Where the customer representative provides sales presentation, advice, or interpretation to clients or prospective clients by phone or in person, the supervising agent should periodically sit or listen in on such conversations with the customer representative's knowledge, to assure that competent and sound advice and information is being provided by the customer representative.

(3) The minimum parameters set forth above are not to be taken as an adequate supervision system; they are merely necessary components of an adequate supervision system. Because there are so many possible factual scenarios, it is neither feasible nor desirable to specify by rule a detailed supervisory system. The supervisory system shall be designed by the supervising agent to provide realistic and reasonable assurance that deficiencies or errors in the customer representative's knowledge or performance will be noted and corrected by the supervising agent at an early stage. The following factors shall be considered in designing a meaningful supervision system:

(a) The customer representative's degree of experience and expertise in the insurance industry in general.

(b) The customer representative's experience and expertise in the specific products handled in the particular office where he/ she will be employed.

(c) The customer representative's formal education, and subsequent training.

(d) How long the agent has known the customer representative.

(e) How long the agent has had an employment relationship with the customer representative.

(f) The customer representative's demonstrated performance under the supervising agent.

(g) The nature and complexity of the work to be performed, and the potential severity of consequences to flow from deficient performance by the customer representative.

(4) The supervising agent is responsible for implementing a system of meaningful limits, clearly conveyed to the customer representative, on the customer representative's activities, calculated to assure that the customer representative does not exceed their ability or expertise, and that matters are referred to the agent when they exceed the customer representative's ability or expertise. Specific Authority 624.308 FS. Law Implemented 624.307(1), ~~626.072~~, 626.7351, 626.7352, 626.7353, 626.7354 FS. History—New 12-19-93, Formerly 4-213.120.

69B-213.130 The Customer Representative's Authority; Limitations. [\(Technical\)](#)

(1) A duly licensed and appointed customer representative may, subject to specific limits set forth in this rule chapter, perform the following functions:

(a) Take insurance applications.

(b) Give quotes.

(c) Interpret policies.

(d) Explain procedures.

(e) Give insurance advice.

(f) Solicit new customers at the agent's office or by telephone from that office.

(g) Bind new or additional coverages.

(h) A customer representative may perform preliminary work to assist in processing a claim, as by taking claims statements, getting estimates, advising claimants as to procedures, preparing claims paperwork, taking photos, and assembling or ordering claims files. However, a customer representative cannot make or sign the actual substantive determination of the amount of a claim, loss, or damage payable, nor conduct settlement negotiations, make settlement of a claim, or issue or sign claims checks or drafts.

(i) Any other function consistent with assisting agents in the transaction of property and casualty insurance and which is not otherwise prohibited by law or rule of the Department.

(2) All applications and/or binders initiated by the customer representative must be co-signed by the designated supervising agent, unless otherwise delineated in the written instructions conveyed to the customer representative by the designated supervising agent.

(3) A customer representative may not solicit or conduct sales work outside of the agent's office. The customer representative must work solely at the supervising agent's principal place of business when doing any work covered by their customer representative license. However, a customer representative may leave the agent's office for clerical or administrative tasks not requiring licensure, such as taking photos of a car for the agent or going to the post office.

(4) A customer representative can, under the supervision of the supervising agent, and only at that agent's principal place of business, conduct customer representative work that assists or supports other agents.

(5) A customer representative must always identify himself/herself as a customer representative working for the named agent, and must never make or allow the impression that the customer representative is an agent.

Specific Authority 624.308 FS. Law Implemented 624.307(1), ~~626.072~~, 626.112, 626.7351, 626.7352, 626.7353, 626.7354 FS. History—New 12-19-93, Formerly 4-213.130.