

BOARD OF CONTRACTORS

Title 30: Professions and Occupations – Board of Contractors

Part 801: Administrative Procedure Rules

Part 801 Chapter 1: Public Access

Rule 1.1 Method of Operation.

1. Scope. Part 801 Chapter 1 Rule 1.1. is promulgated pursuant to Miss. Code Ann. § 25-43-2.104 of the Administrative Procedures Law.
2. Description of Mississippi State Board of Contractors. Reference is made to the Mississippi Code Annotated §§ 31-3-1, et seq. and 73-59-1, et seq. (1972), which creates and sets out the duties and responsibilities of the Mississippi State Board of Contractors (“Board”) and the Standing Committee on Residential Builders and Remodelers (“Standing Committee”). Regulations adopted by the Board are the Mississippi State Board of Contractors Regulations. The Board’s staff is composed of two (2) divisions: Commercial, which regulates the issuance of certificates of responsibility for commercial contractors, and Residential, which regulates the issuance of licenses to residential builders and remodelers.
3. Where and how public may obtain information. The text of all Board rules, as well as information regarding pending rules, meetings and the like may be obtained by visiting the Board’s website at www.msbec.state.ms.us. Requests for Declaratory Opinions may be made pursuant to Part 801 Chapter 1 Rule 1.3 of these rules. Otherwise, requests for information may be made pursuant to and in accordance with the Mississippi Open Records Act by submitting written requests to:

The Mississippi State Board of Contractors
Post Office Box 4124
Jackson, Mississippi 39232-0279
ATTN: Public Records Request

Source: Miss. Code Ann. § 25-43-1.104.

Rule 1.2 Oral Proceedings on Proposed Rules.

1. Scope. Part 801 Chapter 1 Rule 1.2 of these Rules is promulgated pursuant to Miss. Code Ann. § 25-43-3.104(2)(d) of the Administrative Procedures Law, and applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and amendments to rules before the Board under § 25-43-3.104.
2. When Oral Proceedings will be Scheduled on Proposed Rules. The Board will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, an agency or

ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule.

3. Request Format. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the Board and signed by the requestor(s).

4. Notification of Oral Proceeding. The date, time and place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.

5. Presiding Officer. The Executive Secretary, or his designee who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

6. Public Presentations and Participation.

(a) At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.

(b) Persons wishing to make oral presentations at such a proceeding shall notify the Board at least one business day prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not previously contacted the Board.

(c) At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.

(d) The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(e) Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.

(f) There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the participant's time where the orderly conduct of the proceeding so requires.

7. Conduct of Oral Proceeding.

- (a) Presiding officer. The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall (i) call the proceeding to order; (ii) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule and the reasons provided by the Board for the proposed rule; (iii) call on those individuals who have contacted the Board about speaking concerning the proposed rule; (iv) allow for rebuttal statements following all participant's comments; and (v) adjourn the proceeding.
- (b) Questions. The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.
- (c) Physical and Documentary Submissions. Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Board and are subject to the Board's public records request procedure.
- (d) Recording. The Board may record oral proceedings by stenographic or electronic means.

Source: Miss. Code Ann. § 25-43-3.104(2)(d).

Rule 1.3 Declaratory Opinions.

1. Scope. Part 801 Chapter 1 Rule 1.3 of these Rules is promulgated pursuant to Miss. Code Ann. § 25-43-2.103(2) of the Administrative Procedure Law, and is intended to set forth the Board's rules governing the form and content of requests for declaratory opinions, and the Board's procedures regarding the requests, as required by Mississippi Code § 25-43-2.103. These rules are intended to supplement and be read in conjunction with the provisions of the Mississippi Administrative Procedures Law, which may contain additional information regarding the issuance of declaratory opinions. In the event of any conflict between these rules and the Mississippi Administrative Procedures Law, the latter shall govern.
2. Persons Who May Request Declaratory Opinions. Any person with a substantial interest in the subject matter may request a declaratory opinion from the Board by following the specified procedures. "Substantial interest in the subject matter" means: an individual, business, group or other entity that is directly affected by the Board's administration of the laws within its primary jurisdiction. "Primary jurisdiction of the agency" means the agency has a constitutional or statutory grant of authority in the subject matter at issue.
3. Subjects Which May Be Addressed In Declaratory Opinions. The Board will issue declaratory opinions regarding the applicability to specified facts of: (1) a statute administered or enforceable by the Board; or (2) a rule promulgated by the Board; or (3) an order issued by the

Board. The Board will not issue a declaratory opinion regarding a statute or rule which is outside the primary jurisdiction of the agency.

4. Circumstances In Which Declaratory Opinions Will Not Be Issued. The Board may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

- (a) the matter is outside the primary jurisdiction of the Board;
- (b) lack of clarity concerning the question presented;
- (c) there is pending or anticipated litigation, administrative action, or other adjudicative proceedings which may either answer the question presented by the request or otherwise make an answer unnecessary;
- (d) the facts presented in the request are not sufficient to answer the question presented;
- (e) the request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
- (f) the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the statute, rule or order about which a declaratory opinion is sought;
- (g) no controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute, rule or order;
- (h) the question presented by the request concerns the legal validity of a statute, rule or order;
- (i) the request is not based upon facts calculated to aid in the planning of future conduct but is, instead, based on past conduct in an effort to establish the effect of that conduct;
- (j) no clear answer is determinable;
- (k) the question presented by the request involves the application of a criminal statute or a set of facts which may constitute a crime;
- (l) the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- (m) the question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's opinion;

- (n) a similar request is pending before this agency or another agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal or where such an opinion would constitute the unauthorized practice of law;
- (o) where issuance of a declaratory opinion may adversely affect the interests of the State, the Board or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise;
- (p) the question involves eligibility for a license, permit, certificate or other approval by the Board or some other agency, and there is a statutory or regulatory application process by which eligibility for said license, permit, certificate or other approval would be determined.

5. **Written Request Required.** Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the Board.

6. **Where to Send Requests.** All requests must be mailed, delivered or transmitted via facsimile to:

The Mississippi State Board of Contractors
Post Office Box 4124
Jackson, Mississippi 39232-0279

ATTN: DECLARATORY OPINION REQUEST

The request shall clearly state that it is a request for a declaratory opinion. No oral, telephone requests or email requests will be accepted for official opinions.

7. **Name, Address and Signature of Requestor.** Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete and accurate statement of relevant facts and that there are no related proceedings pending before any other administrative or judicial tribunal.

8. **Question Presented.** Each request shall contain the following:

- (a) a clear and concise statement of all facts relevant to the question(s) presented;
- (b) clear identification of the statute, rule or order at issue;
- (c) the question(s) sought to be answered in the opinion, stated clearly;

- (d) the identity of all other known persons involved in or impacted by the described factual situation, including their relationship to the facts, their name, mailing address and telephone number; and
- (e) a statement sufficient to show that the person seeking the opinion has a substantial interest in the subject matter.

9. Time for Board's Response. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Board shall, in writing:

- (a) issue a declaratory opinion regarding the specified statute, rule or order as applied to the specified circumstances;
- (b) decline to issue a declaratory opinion, stating the reasons for its action; or
- (c) agree to issue a declaratory opinion by a specified time but not later than ninety (90) days after receipt of the written request.

The forty-five (45) day period shall begin running on the first State of Mississippi business day on or after the request is received by the Board, whichever is sooner.

10. Opinion Not Final For Sixty Days. A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Board may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

11. Notice By Board To Third Parties. The Board may give notice to any person, agency or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from other persons, agencies or other entities other than the requestor.

12. Provision for Hearing. If the Board in its sole discretion deems a hearing necessary or helpful in determining any issue concerning a request for a declaratory opinion, the Board may schedule such a hearing. Notice of the hearing shall be given to all interested parties unless waived. Notice mailed by first class mail seven (7) calendar days prior to the hearing shall be deemed appropriate. The hearing shall be conducted in a manner deemed appropriate by the Board except that the Board shall allow the requestor to participate in any hearing and may allow the participation of others in its sole discretion as it deems appropriate.

13. Public Availability of Requests and Declaratory Opinions. Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Public Records Act and the Board's public records request procedure. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi

Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

14. Effect of a Declaratory Opinion. The Board will not pursue any civil, criminal or administrative action against a person who is issued a declaratory opinion from the Board, and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. Any declaratory opinion rendered by the Board shall be binding on the Board and the person to whom the opinion is issued. No declaratory opinion will be used as precedent for any other transaction or concurrence beyond that set forth by the requesting person.

Source: Miss. Code Ann. § 25-43-2.103(2).

Title 30: Professions and Occupations – Board of Contractors

Part 802: Commercial Construction

Part 802 Chapter 1: Certificate of Responsibility

Rule 1.1 Application for Certificate of Responsibility

Pursuant to the powers and responsibilities of the State Board of Contractors conferred by Miss. Code Ann. §§ 31-3-13(f) (1972), as amended, and in accordance with Sections Miss. Code Ann. §§ 25-43-3.101 - 25-43-3.115 (1972), known as the Mississippi Administrative Procedures Law, the Board hereby adopts, establishes and promulgates the following rules and regulations and directs that same be entered upon its minutes and made available to all applicants for initial or renewed Certificates of Responsibility issued by the Board and all other persons.

1. The Mississippi State Board of Contractors' ("Board") statutory purpose is to protect the health, safety and general welfare of all persons dealing with those who are engaged in the vocation of contracting and to afford such persons an effective and practical protection against incompetent, inexperienced, unlawful and fraudulent acts of contractors. In carrying out its statutory purpose, the Board issues Certificates of Responsibility and renewals thereof to those engaged in the vocation of contracting, subject to the requirements set forth in law and its Rules and Regulations. Anyone may obtain information from, or make submissions or requests to, in writing or orally, the Executive Secretary of the Board, whose office is located at 2001 Airport Road, Suite 101, Jackson, MS 39208, telephone no. (601) 354-6161, during regular office hours between 8 a.m. and 5 p.m. Monday through Friday.

2. An applicant for a Certificate of Responsibility or Renewal thereof shall observe the following requirements:

- a. Certificates or any renewals thereof may be issued at any time during the course of a calendar year by the Executive Director after his determination that the applicant has satisfied all statutory and other requirements prerequisite to the issuance of a certificate or a renewal thereof.
- b. An application must be filed on a form provided by the Board. No substitute will be accepted.
- c. The Board's application form must be completed in ink or with a typewriter. Only one copy need be filed.
- d. All questions must be answered. All schedules must be completed. Write "None" where applicable. No application will be considered unless it is completed as directed on the Board's form.
- e. Additional information including supplementary or explanatory notes considered necessary may be furnished by inserting schedules where needed.

- f. All signatures must be affixed where called for and notarized where indicated.
- g. A check in the amount of One Hundred Dollars (\$ 100.00) made payable to the State Board of Contractors should accompany the application but may be submitted separately. No application will be acted upon until such check is received.
- h. The privilege tax levied under this Chapter is an annual tax. The Certificate holder is under a duty to renew his certificate annually, and the failure of the Board to notify the Certificate holder as to the date of the expiration shall not excuse the Certificate holder from renewing his certificate and paying the annual tax.
- i. An applicant for a new certificate shall furnish the Board with at a minimum a reviewed financial statement completed within the prior twelve (12) months on a form prescribed by the Board, prepared and signed by a certified public accountant, stating the assets, liabilities and net worth of the person, firm, partnership, co-partnership, or corporation. Such statement will be used by the Board to determine the financial responsibility of the applicant to perform work in the amount of Fifty Thousand Dollars (\$50,000.00) or more with respect to public and private projects. Assets of applicants for major classifications must include a net worth of at least Fifty Thousand Dollars (50,000.00). Assets of all other applicants must include a net worth of at least Twenty Thousand Dollars (\$20,000.00). The financial statement and any information contained therein, as well as any other financial information required to be submitted by an applicant, shall be confidential. All applicants for renewal certificates shall meet the same requirements set forth above except the following applies regarding financial statements: Certificate holders performing work that is equal to or in excess of Two Million Dollars (\$2,000,000.00) per year shall furnish a reviewed financial statement. Certificate holders performing work that is less than Two Million Dollars (\$2,000,000.00) per year shall furnish a balance sheet prepared in accordance with generally accepted accounting principles.
- j. An applicant must provide a certificate of insurance evidencing current minimum coverage of Three Hundred Thousand Dollars (\$ 300,000) per occurrence and Six Hundred Thousand Dollars (\$ 600,000) aggregate for general liability purposes. An applicant must also provide a certificate of insurance evidencing current workers' compensation coverage, if such coverage is required by state law. All applicants for new and renewal certificates of responsibility shall supply the information set forth herein.
- k. A foreign corporation or a corporation domiciled outside the State of Mississippi must qualify to do business in this State with the office of the Secretary of State and provide the Board with a Certificate attesting to such qualification. (Applicants may contact the office of the Secretary of State by mail to P. O. Box 136, Jackson, Mississippi 39205, or by telephone at 601/359-1350.)

1. The qualifying party shall be the owner, or a responsible managing employee, or a responsible managing officer, or a member of the executive staff who appears for and takes examination on behalf of the individual, co-partnership, or corporation seeking a license as referred to in Miss. Code Ann. § 31-3-13(a). The qualifying party is the person who holds the exam scores and must be regularly employed by the Certificate holder and actively engaged in the classification of work for which the person qualifies on behalf of the Certificate holder. The Certificate holder shall furnish proof of employment of the qualifying party upon application and renewal. The qualifying party must have the necessary experience, knowledge and skills to supervise or perform the contracting work in the classification of work for which the person qualifies on behalf of the Certificate holder. When the qualifying party terminates employment with the Certificate holder, the Mississippi State Board of Contractors must be notified in writing immediately, by the qualifying party and the Certificate holder, of the disassociation or the Certificate holder will be subject to suspension or revocation of its Certificate of Responsibility. Another party must qualify within ninety (90) days of the disassociation or the Certificate holder will be subject to suspension or revocation of its Certificate of Responsibility.
 - m. An applicant for renewal of a certificate that has been expired for at least one hundred eighty (180) days shall submit all information required for a new certificate.
 - n. Any corporation or other legal business entity holding a valid Certificate of Responsibility shall immediately notify the Board of any change of name or corporate structure by filing an application with the Executive Secretary of the Board outlining the specific change and the impact on the status of the entity. A fee of \$ 50.00 shall accompany each application filed pursuant to this rule.
 - o. The Executive Secretary may accept and adopt as the requisite objective, standardized examination under Miss. Code Ann. § 31-3-13(a) any comparable examination passed by any applicant that holds a license or certificate in good standing in a comparable classification in another state recognized as a reciprocity state.
3. The Board will classify each applicant and issue a Certificate of Responsibility for the type or types of contracts on which he may bid on the following basis:
 - a. The applicant will not be classified or permitted to bid on or perform a type or types of work not included in his request.
 - b. The applicant shall state on the application the classification of work he desires to perform and contract, such classification to be selected and determined from the following list of major classifications:
 - (1) Building Construction
 - (2) Highway, Street and Bridge Construction

(3) Heavy Construction

(4) Municipal and Public Works Construction

(5) Electrical Work

(6) Mechanical Work

(7) SPECIALTY - A contractor performing Work other than in the above major classification must qualify as a specialty contractor.

4. Any person or entity contracting or undertaking as prime contractor, subcontractor or sub-subcontractor of any tier to do any work as a construction manager shall have a certificate of responsibility either in the specialty classification of construction management or the major classification of Building Construction.

5. Should any information contained in any application or presented at an oral interview for a Certificate of Responsibility be found by the State Board of Contractors to be false, such Certificate of Responsibility so issued or application being considered shall thereupon be terminated and withdrawn. No certificate holder or applicant shall be issued a renewal of or an initial Certificate of Responsibility until a period of five (5) years has expired after the date of such termination or withdrawal.

6. On proof of qualifications satisfactory to the Board, a Certificate holder may apply for and receive a change in his classification.

7. There will be a \$ 50.00 fee charged for each additional classification sought, and a \$ 50.00 fee for each exam taken. Any waiver of an examination shall require a \$ 50.00 fee. There will also be a \$ 50.00 fee for a name change and a \$ 25.00 fee for any specialized information list.

8. No certificate of responsibility or any renewal thereof shall be issued until the applicant furnishes proof to the Board that the Certificate holder is in good standing with the Mississippi Secretary of State.

9. The passing score for the examination requirement provided in Miss. Code Ann. § 31-3-13(a) (1972, as amended) is a grade of at least 70%. Any applicant for a Certificate of Responsibility must furnish proof of having taken an objective, standardized examination. The Board may administer an oral examination to an applicant, upon request, if such applicant is unable to take a written exam.

10. If a Certificate of Responsibility is revoked, lost, mutilated or destroyed, a new license may be issued through the Board's discretion, upon receipt of a written request from the licensee stating the reason for the request, the Certificate of Responsibility number and check in the amount of Fifty Dollars (\$50.00).

Source: Miss. Code Ann. §§ 25-43-3.101 - 25-43-3.115 and §§ 31-3-1, et seq.

Rule 1.2 Certificate of Responsibility – Public Procurement

1. All agencies having the authority to award a contract involving public funds in the amount of Fifty Thousand Dollars (\$ 50,000.00) or more, shall return, unopened, any bids submitted by a contractor not having a Certificate of Responsibility required by Sections 31-3-1 - 31-3-23, Miss. Code Ann. (1972, as amended).
2. For all purposes herein, “bid” is defined as an offer, whether written or verbal, to perform all or part of a contract.
3. When the total cost of a project is at least 50% of a particular classification of work, as determined by the awarding entity or its engineer, architect or other representative, the awarding entity shall allow the older of the certificate of responsibility in that particular classification to bid on or enter into a contract to perform work on the project in its entirety.
4. In any case in which a holder of a Certificate of Responsibility has bid outside the classification contained in his, her or its Certificate of Responsibility, the Executive Secretary of the State Board of Contractors shall notify each holder to appear before the Board at its next regular meeting and show cause, if possible, why the holder’s Certificate of Responsibility shall not be suspended.
5. When separate bids are received, building contractors having only the classification of “Building Construction” shall not be permitted to bid on or be awarded the Mechanical or Electrical contracts; likewise the Mechanical or Electrical Contractors shall not be permitted to bid on the building portion of a project when the building costs are at least 50% of the project. When combined building, mechanical and electrical bids are received, nothing herein or in any other rule or regulation, shall prohibit the holder of a certificate of responsibility with the classification of building construction from submitting a bid and/or entering into a contract to perform work on a project which consists of at least 50% mechanical, electrical or other classification of work; provided, however, that the holder of a certificate of responsibility with the classification of building construction shall also have the appropriate classification necessary to perform the mechanical, electrical or other classification of work.
6. In the event a contractor bids on a job covered by this act without first having obtained a Certificate of Responsibility from the Mississippi State Board of Contractors, his, her or its application for a Certificate of Responsibility shall not be acted upon until a minimum period of ninety (90) days after receipt.
7. No state recognizes the Certificate of Responsibility issued by this Board. Therefore, no awarding agency of this state shall consider any bid of a contractor who holds a Certificate of Responsibility or license issued by another state, if the respective bidder does not also have a Certificate of Responsibility issued by the Mississippi State Board of Contractors.
8. It shall be unlawful and illegal for a Primary Contractor, Contractor, Owner, Awarding Authority, Subcontractor, or any other person to contract, or subcontract, all of any portion of a

public or private construction project regulated by Chapter 527, General Laws of Mississippi - 1988 (Sections 31-3-1 - 31-3-23, Miss. Code Ann. (1972, as amended)), exceeding Fifty Thousand Dollars (\$50,000.00) with respect to public and private projects to any other Contractor, or Sub-Contractor, unless the Contractor, or Subcontractor was duly licensed by this Board as of the date of submission of bids on the work. It is further provided that the Prime Contractor, on or before the date of being awarded the prime contract, shall submit to the awarding agency a list of all subcontracts, exceeding Fifty Thousand Dollars (\$50,000.00) with respect to public and private projects.

9. Either all contractors making up a joint venture or the joint venture itself must hold certificates of responsibility prior to submitting a bid or being awarded a contract. When two or more contractors comprising a joint venture all hold certificates of responsibility, such certificates may be for different classifications of work, but the contract to be awarded should include the classifications of work for which the individual member of the joint venture hold certificates. Further, contractors engaging in a joint venture should not perform work that exceeds the statutory scope of their certificate(s). (See AG Opinion December 3, 1990 to Harper, and AG Opinion dated April 5, 1991 to Cardin.)

When a joint venture submits a bid on a public project in excess of Fifty Thousand Dollars (\$ 50,000.00), and the joint venture itself does not hold a certificate of responsibility, each contractor comprising the joint venture shall place its certificate of responsibility number on the outside of the envelope containing the bid as set forth in Miss. Code Ann. § 31-3-21(2), as amended. If the joint venture itself holds a certificate of responsibility, then it shall place its certificate number only on the outside of the envelope.

10. Any of the foregoing Rules and Regulations of the Board shall not apply to contracts involving federal funds if in violation of federal requirements.

Source: Miss. Code Ann. §§ 25-43-3.101 - 25-43-3.115 and §§ 31-3-1, et seq.

Part 802 Chapter 2: Charges of Misconduct and Disciplinary Action

Rule 2.1 Complaint & Hearing Procedures

The Board shall act in accordance with the following procedures when issuing a complaint and before imposing a monetary penalty upon any contractor pursuant to Miss. Code Ann. § 31-3-21:

- a. Whenever the Board shall receive a sworn affidavit charging a contractor with an act which is grounds for imposition of a monetary penalty pursuant to § 31-3-21, or whenever the Board or an employee of the Board has reason to believe that a violation has occurred which is grounds for imposition of a monetary penalty pursuant to § 31-3-21, the Board may cause a written complaint to be served upon the alleged violator or violators.
- b. The written complaint shall specify the provisions of such statute, regulation or order alleged to be violated and the facts alleged to constitute a violation thereof and shall

require that the alleged violator(s) appear before the Board at a time and place specified and answer the charges complained of. The time of appearance before the Board shall not be less than ten (10) days from the date of the service of the complaint, unless the Board finds that the health, safety and general welfare of all persons dealing with those against whom charges are levied is in imminent danger, requiring that such hearing be held at an earlier date. In no instance, however, shall the Board ever require an alleged violator(s) to appear less than five (5) days after the date of service of the complaint. Service of the complaint may be accomplished by mailing a copy thereof by certified mail, return receipt requested, postage prepaid to the last known mailing or residence address of the alleged violator(s), or by other lawful means of service.

- c. The Board shall afford an opportunity for a fair hearing to the alleged violator(s) at the time and place specified in the complaint. The alleged violator(s) may be represented by counsel, and may call witnesses and present other competent evidence on its behalf. The Board shall conduct an administrative hearing, and shall not be bound by strict rules of civil procedure or strict rules of evidence in the conduct of its proceedings. On the basis of the evidence presented at the hearing, the Board shall make findings of fact and conclusions of law and enter its order. Failure to appear at any such hearing, without prior authorization to do so from the Board, may be taken by the Board as evidence of the facts alleged in the formal complaint.
- d. When a complaint is issued, a notice of hearing shall be issued simultaneously including the date and location of the hearing along with a requirement that the accused contact the Board no later than five (5) days prior to the hearing to schedule a specific time for appearance at the hearing. Failure to contact the Board to schedule a specific time for appearance may result in the accused being heard only after all other scheduled matters have been addressed or not being heard on that scheduled date.
- e. If the accused fails to respond timely to the complaint, then the Board may consider the charges set forth therein and all other available evidence in determining whether the accused has violated the law. In the event the Board finds a violation of the law, then the Board may impose any of the penalties set forth in Miss. Code Ann. § 31-3-21.
- f. Any request for continuance must be made in writing and presented to the Board staff at least five (5) days prior to the scheduled hearing or, upon good cause shown, at any time prior to the hearing. Continuances will not be routinely granted. Instead, a party must show substantial, legitimate grounds for a continuance. Where scheduling conflicts are the basis for requesting a continuance, the party shall provide written proof of such conflicts in a timely manner as set forth herein.
- g. The Board shall render any order in writing and notify the alleged violator(s) of same by certified mail, to the last known mailing or residence address of the alleged violator(s).
- h. At any time before or after being served with a complaint, any alleged violator(s) may waive its right to a hearing before the Board and agree to an imposition of the civil penalty, provided such waiver is in writing.

- i. Any person aggrieved by any order or decision of the board may appeal pursuant to Miss. Code Ann. § 31-3-23, as amended.

Source: Miss. Code Ann. §§ 25-43-3.101 - 25-43-3.115 and §§ 31-3-1, et seq.

Rule 2.2 Administrative Penalties

In determining the amount of a monetary penalty, the Board shall consider at a minimum the following:

- (1) The willfulness of the violation;
- (2) Any cost of restoration and abatement;
- (3) Any economic benefit to the violator(s) as a result of noncompliance;
- (4) The seriousness of the violation, including any harm to the environment and any harm to the health and safety of the public; and
- (5) Any prior violation by such violator(s).

Source: Miss. Code Ann. §§ 25-43-3.101 - 25-43-3.115 and §§ 31-3-1, et seq.

Part 802 Chapter 3: General Rules

Rule 3.1 Board Meetings

If a regular or special meeting of the Board has been recessed to reconvene on a day and time fixed and ordered by the Board and entered upon its minutes, the recessed meeting thus held on the subsequent date shall be considered a part of and continuation of the regular meeting or special meeting, as the case may be, the same as if actions and proceedings then taken had been taken at the initial regular meeting date or special meeting date and any action authorized on such an initial date may be taken or continued and passed upon at the later date or dates.

Source: Miss. Code Ann. §§ 25-43-3.101 - 25-43-3.115 (1972).

Rule 3.2 Executive Secretary

1. Neither the Executive Secretary, individually, nor the surety of his official bond shall be held financially liable or responsible for any action taken by the Executive Secretary when he is acting under direct instructions from the Board as shown by the minutes of the Board.

2. The Executive Secretary of the Board is hereby granted authority to execute all Orders passed by the Board as set forth in the official minutes of the Board. (05/19/93)

Source: Miss. Code Ann. §§ 25-43-3.101 - 25-43-3.115 (1972).

Rule 3.3 Miscellaneous

1. Any of the foregoing Rules and Regulations of the Board may be suspended and/or modified by a majority vote of the State Board of Contractors unless such suspension or modification is inconsistent with the general laws governing the Board and its operation. Such change or modification shall not be effective for a period of ninety (90) days after the date of such suspension or modification.

2. If any provision of any section of these Rules and Regulations or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provisions of that section or application of the Rules and Regulations which can be given effect without the invalid provisions or application, and to this end the provisions of these Rules and Regulations are declared to be severable.

3. These Rules and Regulations shall become effective thirty (30) days after promulgation and filing with the Secretary of State.

Source: Miss. Code Ann. §§ 25-43-3.101 - 25-43-3.115 (1972).

Title 30: Professions and Occupations – Board of Contractors

Part 803: Residential Builders and Remodelers

Part 803 Chapter 1: Licensing

Rule 1.1 Application for License.

1. An applicant for a License or Renewal thereof shall observe the following requirements:
 - a. Licenses or any renewals thereof may be issued at any time during the course of a calendar year by the Executive Director after his determination that the applicant has satisfied all statutory and other requirements prerequisite to the issuance of a license or a renewal thereof.
 - b. An application must be filed on a form provided by the Board. No substitute will be accepted.
 - c. The Board's application form must be completed in ink or with a typewrite. Only one copy need be filed.
 - d. All questions must be answered. All schedules must be completed. Write "None" where applicable. No application will be considered unless it is completed as directed on the Board's form.
 - e. Additional information including supplementary or explanatory notes considered necessary may be furnished by inserting schedules where needed.
 - f. All signatures must be affixed where called for and notarized where indicated.
 - g. An applicant for a residential remodeler's license may seek licensing for a subclassification to be known as a residential roofer. For this subclassification, there shall be administered a separate roofer's examination and the residential remodeler's license shall be clearly marked that it only licenses the holder as a residential roofer.
 - h. A check in the amount of Fifty Dollars (\$50.00), representing the initial license fee, made payable to the State Board of Contractors should accompany the application but may be submitted separately. A check in the amount of One Hundred Dollars (\$100.00) made payable to the State Board of Contractors, shall accompany all requests for renewal of licenses. No application will be acted upon until such check is received.
 - i. The privilege tax levied under this Chapter is an annual tax. The licensee is under a duty to renew his license annually, and the failure to the Board to notify the licensee holder as to the date of the expiration shall not excuse the licensee from renewing his certificate and paying the annual tax.

- j. An applicant must furnish the Board with, at a minimum, a reviewed financial statement on form prescribed by the Board, prepared and signed by a certified public accountant, stating the assets, liabilities and net worth of the person, firm, partnership or corporation. Such statement will be used by the Board to determine the financial responsibility of the applicant. This information shall be confidential.
 - k. An applicant shall provide a certificate of insurance evidencing current workers' compensation insurance, if applicable, and a federal employment identification number or social security number of the person making application.
 - l. An applicant for a residential builder's license shall provide a copy of the certificate of insurance evidencing current minimum of \$300,000 per occurrence and \$500,000 aggregate for general liability purposes. An applicant for a remodeler's license shall provide a copy of the certificate of insurance evidencing current minimum coverage of \$100,000 per occurrence and \$200,000 aggregate for general liability purposes.
 - m. A foreign corporation or a corporation domiciled outside the State of Mississippi must qualify to do business in this State with the office of the Secretary of State and provide the Board with a Certificate attesting to such qualification. (Applicants may contact the office of the Secretary of State by mail to Post Office Box 136, Jackson, Mississippi 39205, or by telephone at 601/359-1350.
 - n. An applicant for a license must pass the applicable written examination with a grade of at least 70%.
 - o. The Board will hold examinations at locations and times to be determined by the Board. Applicants will be notified of the time and place of the examination.
 - p. A licensee of another state who desires to obtain a license duly issued and authorized by this Chapter shall be exempt from taking the written examination provided the Board determines that the requirements for a license in the foreign state are equivalent to such examination in this state and provided that the foreign state in question extends the same privilege to Mississippi licensees.
 - q. If a license is revoked, lost, mutilated or destroyed, a new license may be issued, through the Board's discretion, upon receipt of a written request from the licensee stating the reason for the request, the Certificate of Responsibility number and check in the amount of Fifty Dollars (\$ 50.00).
2. Should any information contained in any application or presented at any oral interview for a license be found by the Board to be false, such license so issued or application being considered shall thereupon be terminated and withdrawn. No licensee or applicant submitting such information shall be issued a renewal of or an initial license until a period of five (5) years has expired after the date of such termination or withdrawal.

3. Any corporation or other legal business entity holding a valid license shall immediately notify the Board of any change of name or corporate structure by filing an application with the Executive Secretary of the Board outlining the specific change and the impact on the status of the entity. A fee of \$ 50.00 shall accompany each application filed pursuant to this rule.

4. A licensee may change the status of his/her license from active to inactive by notify the Board, in writing, returning the license to the Board, and submitting a check in the amount of Twenty Five Dollars (25.00). To reactivate an inactive license, the licensee must notify, in writing, the Board of his/her intentions to reactivate the license, submit the above referenced fee and provide proof of current workers' compensation and liability insurance where applicable.

Source: Miss. Code Ann. § 73-59-5.

Rule 1.2 Display of Building Permit.

Once a building permit is issued to a residential builder or remodeler, or the holder of a certificate of responsibility by a municipal or county building official, or any other authority charged with the duty of issuing local building permits, such licensed residential builder or residential remodeler or holder of a certificate of responsibility shall exhibit a sign at the permitted job site which shall include, prominently displayed in lettering at least two (2) inches high and twelve (12) inches wide, the license or certificate of responsibility number of the residential builder or residential remodeler or holder of the certificate of responsibility and the State issuing it.

Source: Miss. Code Ann. § 73-59-11(f).

Rule 1.3 Liability Insurance Disclosure Statement.

The holder of a valid license as a residential builder, remodeler or roofer shall provide written disclosure at the time of contracting to the person with whom the licensee is contracting as to whether there is general liability insurance insuring the professional actions and work of the licensee. This disclosure shall be placed on the contracting document immediately before the space reserved on the document for the signature of the purchaser, shall be in bold and conspicuous type with a font size larger than the font appearing on the remainder of the contract, and shall be in words as follows:

Mississippi law requires that I inform you as to whether I carry general liability insurance insuring my work under this contract. I DO carry general liability insurance. By your signature below, you signify your understanding and acknowledgment of this fact.

OR

Mississippi law requires that I inform you as to whether I carry general liability insurance insuring my work under this contract. I do NOT carry general liability insurance. By your signature below, you signify your understanding and acknowledgement of this fact and that as a consequence, you are hiring an uninsured contractor. Without insurance, there is no

insurance coverage insuring my activities and the work performed during construction or afterward. This means further that there is no insurance coverage for damage to your home caused by me, my agents or employees or for injuries sustained by others while I am working on your property or subsequent to completion of my work.

Source: Miss. Code Ann. § 73-59-11(f).

Part 803 Chapter 2: Charges of Misconduct and Disciplinary Action

Rule 2.1 Complaint and Hearing Procedures

1. The Standing Committee on Residential Builders and Remodelers (“Standing Committee”) and the Mississippi State Board of Contractors (“Board”) shall act in accordance with the following procedures after receiving a sworn complaint about a residential builder or remodeler:

- a. When the Board receives sworn charges as set forth in Miss. Code Ann. § 73-59-13(2), the Board shall deliver to the accused a letter, via regular mail, outlining the charges and requesting the accused to respond, in writing, to the charges within ten (10) days after receipt of the letter.
- b. If the accused fails to respond timely, the Board shall deliver to the accused a second letter, via certified mail, return receipt requested, outlining the charges and requesting the accused to respond, in writing, to the charges within ten (10) days after receipt of the letter.
- c. If the accused responds timely to either letter set forth above, the Board shall investigate the matter and may issue a formal complaint and Notice of Hearing against the accused and cause a hearing to be held as set forth in Miss. Code Ann. § 73-59-13(2) and these rules.
- d. If the Board determines that there is reasonable cause to believe a complaint is valid and not frivolous, it shall proceed with an appropriate investigation. Subsequent to the investigation and in the Board’s discretion, the Board shall cause a hearing to be held concerning the charges against the licensee. If the Board determines that such a hearing is necessary, a copy of the complaint and notice of hearing shall be served upon the licensee in person or by certified mail at the licensee’s last known address, not less than thirty (30) days prior to the date for the scheduled hearing. The Board shall render a decision within ninety (90) days of the close of the hearing and a copy of such written decision shall be presented to each party in person or by certified mail at their last known address. In any event, all requirements pertaining to hearings set forth in Miss. Code Ann. § 73-59-13, as amended, shall be followed.
- e. If the accused fails to respond timely to the second letter, then the Board shall deliver to the accused a formal Complaint along with a Notice of Hearing requesting the accused to respond to the charges and setting a hearing date no less than thirty (30) days from the date of service. The Notice of Hearing shall include the date and location of the

hearing along with a requirement that the accused contact the Board no later than fifteen (15) days prior to the hearing to schedule a specific time for appearance at the hearing. Failure to contact the Board to schedule a specific time for appearance may result in the accused being heard only after all other scheduled matters have been addressed or not being heard on that scheduled date.

- f. If the accused fails to respond timely to the formal Complaint, then the Standing Committee and the Board may consider the charges set forth therein and all other available evidence in determining whether the accused is guilty of the charges filed. In the event the Board finds the accused guilty of the charges filed, it may impose any of the penalties set forth in Miss. Code Ann. § 73-59-13(5).
- g. Any request for a continuance must be made in writing and presented to the Chair of the Standing Committee at least fifteen (15) days prior to the scheduled hearing or, upon good cause shown, at any time prior to the hearing. Continuances will not be routinely granted. Instead, a party must show substantial, legitimate grounds for a continuance. Where scheduling conflicts are the basis for requesting a continuance, the party shall provide written proof of such conflicts in a timely manner as set forth herein.
- h. The Board shall notify the accused of any decision as set forth herein according to Miss. Code Ann. § 73-59-13(4). The accused shall have the right to appeal this decision as set forth in Miss. Code Ann. § 73-59-13(11).

2. All complaints and/or charges against a licensee shall be submitted to the Board on the proper forms provided by the Board.

3. All Board members shall refrain from formal interviews and/or comments in connection with a pending charge or complaint submitted to the Board.

4. Licensee shall within seven (7) days after final judgment, notify the Board of any adverse court decision in which the licensee was included.

Source: Miss. Code Ann. §§ 25-43-3.101 - 25-43-3.115 (1972).

Rule 2.2 Administrative Penalties

1. If the Standing Committee on Residential Builders and Remodelers determines that a civil penalty should be assessed for a violation of law, then it shall consider at a minimum the following factors in determining the amount of the civil penalty:

- a. The willfulness of the violation;
- b. Any cost of restoration or abatement;
- c. Any economic benefit to the violator as a result of noncompliance;

d. The seriousness of the violation, including any harm to the complainant or the public;
and

e. Any prior violation by the violator.

2. Failure to adhere to the rules and/or regulations of the Board shall constitute grounds for suspension or revocation and, in the Board's discretion, monetary penalties pursuant to statutory authority.

Source: Miss. Code Ann. § 73-59-13.

Part 803 Chapter 3: General Rules

Rule 3.1 Board Meetings

If a regular or special meeting of the Board has been recessed to reconvene on a day and time fixed and ordered by the Board and entered upon its minutes, the recessed meeting thus held on the subsequent date shall be considered a part of and continuation of the regular meeting or special meeting, as the case may be, the same as if actions and proceedings then taken had been taken at the initial regular meeting date or special meeting date and any action authorized on such an initial date may be taken or continued and passed upon at the later date or dates.

Miss. Code Ann. § 73-59-11(f).

Rule 3.2 Executive Secretary

Neither the Executive Secretary, individually, nor the surety of his official bond shall be held financially liable or responsible for any action taken by the Executive Secretary when he is acting under direct instructions from the Board as shown by the minutes of the Board.

Miss. Code Ann. § 73-59-11(f).

Rule 3.3 Miscellaneous

1. Any of the foregoing Rules and Regulations of the Board shall not apply to contracts involving federal funds if in violation of federal requirements.

2. Any of the foregoing Rules and Regulations of the Board may be suspended and/or modified by a majority vote of the State Board of Contractors unless such suspension or modification is inconsistent with the general laws governing the Board and its operation. Such change or modification shall be made in accordance with the provisions of the Mississippi Administrative Procedures Law, Section 25-43-1 through 25-43-19, as amended.

3. If any provision of any section of these Rules and Regulations or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provisions

of that section or application of the Rules and Regulations which can be given effect without the invalid provisions or application, and to this end the provisions of these Rules and Regulations are declared to be severable.

4. Anyone may obtain public information from, or make submissions or requests to, in writing or orally, the Executive Secretary of the Board, whose office is located at 2001 Airport Road, Suite 101, Jackson, MS 39208, telephone no. (601) 354-6161, during regular office hours between 8 a.m. and 5 p.m. Monday through Friday.

5. These Rules and Regulations shall become effective thirty (30) days after promulgation and filing with the Secretary of State.

Source: Miss. Code Ann. § 73-59-11(f).