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PART 301

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RULES
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TITLE 21 LAW AND JUSTICE
PART 301 - MISSISSIPPI TORT CLAIMS BOARD RULES

Part 301 Chapter 1 Mississippi Tort Claims Board Rules to Comply with the Administrative Procedures Act

Rule 1.1 ***Purpose.*** The purpose of this rule is to describe the organization of the Mississippi Tort State Board (hereafter referred to as MTCB) and how the public may obtain information from the Board as required by Section 25-43-2.104 (a) of the Mississippi Code of 1972, as amended.

Source: *Miss. Code Ann. §§ 25-43-2.104(a); 11-46-19(q)*

Rule 1.2 ***Organization.*** This rule establishes a description of the MTCB'S organization which states the general course and method of its operations, including how the public may obtain information or make submissions/requests to the MTCB.

Source: *Miss. Code Ann. §§ 25-43-2.104(a); 11-46-19(q)*

Rule 1.3 ***Obtaining Information.*** The public may obtain a description of the MTCB'S organization from the Guidelines and Regulations of the MTCB currently on file with the Secretary of State. Additionally, the public may access information relevant to the MTCB at their website www.dfa.state.ms.us, or by reviewing Sections 11-46-1 et seq., of the Mississippi Code of 1972, as amended, which may be accessed at www.state.ms.us. The public may also request information, make submissions or requests including Mississippi Open Records Act requests by contacting the MTCB Administrator at Post Office Box 267, Jackson, MS, 39205. See also Chapter 07 Public Access to Records.

Source: *Miss. Code Ann. §§ 25-43-2.104(a); 11-46-19(q)*

Part 301 Chapter 2 Informal Proceedings Available to the Public

Rule 2.1 ***Purpose.*** The Purpose of this rule is to inform the public of all informal proceedings available to the public as required by Section 25-43-2.104 (b) of the Mississippi Code of 1972, as amended.

Source: *Miss. Code Ann. §§ 25-43-2.104(b); 11-46-19(q)*

Rule 2.2 ***MTCB Proceedings.*** This rule establishes information on all MTCB proceedings.

A. All information as to the rules of practice concerning all formal and informal proceedings are available by reviewing the rules and regulations of the MTCB currently on file with the Secretary of State. Further information may be obtained by reviewing the MTCB website at

www.dfa.state.ms.us, or by reviewing Sections 11-46-1 et seq., of the Mississippi Code of 1972, as amended, which may be accessed at www.state.ms.us.

B. The MTCB generally meets the 2nd Thursday of every other month at 1:30 P.M. at the Woolfolk State Office Building, 501 North West Street, Jackson, MS 39201. Other meetings may be called by the Board as necessary.

Source: *Miss. Code Ann. §§ 25-43-2.104(b); 11-46-19(q)*

Part 301 Chapter 3 Public Hearings

Rule 3.1 Purpose. These sections set forth MTCB'S procedures for involving the public in the development of rules through public meetings and/or public hearings as required by Mississippi Code § 25-43-3.104.

Source: *Miss. Code Ann. §§ 25-43-31.04; 11-46-19(q)*

Rule 3.2 Requirements for Public Hearings.

A. At the time a Rule is filed with Secretary of State, the Administrator must also publish where written submissions or written requests for an opportunity to make oral presentations on the proposed rule may be inspected or submitted.

B. A public hearing is required if, during the first 20 business days of the rule notice, a written request for a public hearing is received from one of the following:

1. a political subdivision

2. an agency, or

3. 10 persons

C. If a public hearing is required, the Administrator will establish the time, date and location for the public hearing. The Administrator shall then:

1. Ensure that the public hearing is not scheduled earlier than 23 business days after filing notice of oral proceeding with SOS.

2. File notice of the time, date, and location of the public hearing with the Secretary of State.

3. Within three (3) days of filing notice with SOS, Administrator must mail or electronically transmit a copy of the notice to those who are on the notification list (their preference); MTCB can charge for mail but not electronic transmissions.

Source: *Miss. Code Ann. §§ 25-43-2.104(b); 11-46-19(q)*

Rule 3.3 ***Location of Public Hearings.*** Public hearings shall be held at a place and time generally convenient for persons affected by the rule.

Source: *Miss. Code Ann. §§ 25-43-2.104(b); 11-46-19(q)*

Rule 3.4 ***Conducting Public Hearings.***

A. Public Hearings must be open to the public.

B. The Administrator will preside at the proceeding.

C. The Administrator may issue rules for conduct of oral proceedings.

Source: *Miss. Code Ann. §§ 25-43-2.104(b); 11-46-19(q)*

Rule 3.5 ***Public Availability of Public Hearings.***

A. A verbatim written transcript of the oral proceedings at each public hearing shall be produced by the Administrator.

B. This material will be available for public inspection and copying as part of the Rule-Making Record.

Source: *Miss. Code Ann. §§ 25-43-2.104(b); 11-46-19(q)*

Part 301 Chapter 4 <u>Declaratory Opinions</u>

Rule 4.1 ***Purpose.*** These sections set forth the MTCB'S procedures regarding the requests for Declaratory Opinions, as required by § 25-43-2.103 of the Mississippi Code of 1972, as amended.

Source: *Miss. Code Ann. §§ 25-43-2.103; 11-46-19(q)*

Rule 4.2 ***General.*** Declaratory Opinions will be prepared by the Administrator and approved by the Tort Claims Board.

Source: *Miss. Code Ann. §§ 25-43-2.103; 11-46-19(q)*

Rule 4.3 ***Persons Who May Request Declaratory Opinions.*** Any person with a substantial interest in the subject matter may request the MTCB for a declaratory opinion by following the specified procedures.

Source: *Miss. Code Ann. §§ 25-43-2.103; 11-46-19(q)*

Rule 4.4 Subjects Which May be Addressed in Declaratory Opinions.

A. The MTCB will issue declaratory opinions regarding the applicability to specified facts of:

1. A statue administered or enforceable by the MTCB,

2. A rule promulgated by the MTCB, or

3. An order issued by the MTCB.

B. The MCTB will not issue a declaratory opinion regarding a statute, rule or order which is beyond the primary jurisdiction of the MTCB.

C. "Primary jurisdiction of the agency" means:

1. The agency has a constitutional grant of authority in the subject matter,

2. The agency has a statutory grant of authority in the subject matter,

3. The agency has issued specific regulations impacting on the subject matter, or

4. The agency has issued a specific order or orders impacting on the subject matter.

Source: *Miss. Code Ann. §§ 25-43-2.103; 11-46-19(q)*

Rule 4.5 Circumstances In Which Declaratory Opinions Will Not Be Issued.

A. The MTCB may, for good cause, refuse to issue a declaratory opinion. Without limiting the generality of the foregoing, the circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

1. The matter is outside the jurisdiction of the MTCB;

2. Lack of clarity concerning the question presented;

3. There is pending or anticipated litigation, administrative action, or other adjudication;

4. The statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;

5. The facts presented in the request are not sufficient to answer the question presented;

6. The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;

7. 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 rule, statue or order on which a declaratory opinion is sought;

8. 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;

9. The question presented by the request concerns the legal or constitutional validity of a statute, rule or order;

10. The requestor has not suffered an injury or threatened injury fairly traceable to the application of the statute, rule or order;

11. No clear answer is determinable;

12. The question presented by the request involves the application of a criminal statute or sets for facts which may constitute a crime;

13. The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;

14. The question is currently the subject of an Attorney General's opinion request;

15. The question has been answered by an Attorney General's opinion;

16. The request is not made in good faith; or

17. The request is harassing in nature or for any other unlawful purposes.

B. A declaratory opinion will not be issued where a similar request is pending before this agency or any other 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.

C. A declaratory opinion will not be issued if it may adversely affect the interests of the State, the MTCB or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise.

D. A declaratory opinion shall not be binding or effective for any third party or person other than the MTCB and the person to whom the opinion is issued and shall not be used as precedent for any other transaction or occurrence beyond that set forth by the requesting person.

E. Where a request for a declaratory opinion involves a question of law, the MTCB may refer the matter to the State Attorney General.

Source: *Miss. Code Ann. §§ 25-43-2.103; 11-46-19(q)*

Rule 4.6 Form of the Request for a Declaratory Opinion.

A. Written Requests 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 MTCB or in the form of a pleading as might be addressed to a court.

B. Where to Send Request. All requests must be mailed or delivered to the MTCB Administrator. The request and its envelope shall clearly state that it is a request for a declaratory opinion. Oral and telephone requests are unacceptable.

C. 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, unless represented by an attorney, in which case the attorney may sign the request. The signing party 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 agency, administrative or judicial tribunal.

D. Single transaction. A request must be limited to a single transaction or occurrence.

E. Question Presented. Each request shall contain the following:

1. A clear identification of the statute, rule, or order at issue;

2. A concise statement of the issue or question presented for the declaratory opinion;

3. A full, complete, and accurate statement of all facts relevant to a resolution of the question presented;

4. The identity of all other known persons involved in or impacted by the factual situation causing the request including their relationship to the facts; their name, mailing address and telephone number;

5. A statement sufficient to show that the person seeking relief is substantially affected by the rule.

F. The terms of the proposed opinion suggested by the requestor may be submitted with the request or may be requested by the agency;

G. Memorandum of Authorities. A request may contain an argument by the requestor in support terms of the proposed opinion suggested by the requestor. The argument may be submitted in the *form* of a memorandum of authorities, containing a full discussion of the reasons, including any legal authorities, in support of such position of the requestor. The agency may request that argument and memorandum of authorities be submitted by any interested party.

Source: *Miss. Code Ann. §§ 25-43-2.103; 11-46-19(q)*

Rule 4.7 Time for MTCB'S Response.

A. MTCB'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 MTCB shall in writing:

1. Issue an opinion declaring the applicability of the specified statute, rule, or order to the specified circumstances;

2. Decline to issue a declaratory opinion, stating the reasons for its action; or

3. Agree to issue a declaratory opinion or a written statement declining to issue a declaratory opinion by a specified time but no later than ninety (90) days after receipt of the written request.

B. When Period Begins to Run. The forty-five (45) day period shall begin running on the first State of Mississippi business day that the request is received in the offices of the MTCB.

Source: *Miss. Code Ann. §§ 25-43-2.103; 11-46-19(q)*

Rule 4.8 Public Availability of Requests and Declaratory Opinions.

A. The Administrator will make declaratory opinions and requests for declaratory opinions available for public inspection and copying at the expense of the viewer during normal business hours. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is exempted from disclosure under the Mississippi Public Records Act or is otherwise confidential by law shall be exempt from this requirement.

Source: *Miss. Code Ann. §§ 25-43-2.103; 11-46-19(q)*

Part 301 Chapter 5 <u>Availability of MTCB Orders</u>

Rule 5.1 Procedures and Authority. These sections set forth the procedures for making the MTCB Orders available to the public as required by § 25-42-2.102 of the Mississippi Code of 1972, as amended.

A. The Administrator shall be responsible for making them available for public inspection and copying indexed by name and subject. This is subject to any confidentiality provisions established by law.

B. The written final order can't be precedent to the detriment of any person by the MTCB until it has been made available for public inspection & indexed.

1. This is inapplicable to any person who has actual timely knowledge of the order;

2. The burden of proof is on the MTCB.

Source: *Miss. Code Ann. §§ 25-43-2.102; 11-46-19(q)*

Part 301 Chapter 6 <u>By-Laws of Mississippi Tort Claims Board</u>

Rule 6.1 Officers and Meetings.

A. **Officers and Authority**: The presiding officer of the Board shall be a Chairman appointed by the Governor subject to the advice and consent of the Senate to serve at the will and pleasure of the Governor. A Vice-Chairman shall be elected by the membership of the board by majority vote at the annual meeting of the board to serve for a term of one year. The Chairman shall preside at all meetings and shall have such authority and shall perform such duties as provided by, or may be reasonably inferred from, statutory provision, these by-laws or as may be determined and conferred by a resolution of the board not inconsistent with the laws of this state or these by-laws. The Vice-Chairman shall be authorized to preside in the absence or incapacity of the Chairman.

The six (6) ex officio members of the Board are: the Director of the Department of Environmental Quality, the Commissioner of Insurance; the Director of the Department of Finance and Administration; the Attorney General; the Commissioner of Public Safety; and the State Treasurer.

B. **Annual Meetings**: There shall be an annual meeting of the Board held each year in the offices of the Department of Finance and Administration on the first Thursday of June, unless notice of the meeting to be held shall designate another place and time.

C. **Regular Meetings**: The Board may authorize such other regular meetings as may be desired by resolution upon its minutes designating the time, date, and place of such regular meetings.

D. **Special Meetings**: Extraordinary meetings of the Board may be held upon call of the Chairman or upon petition of any four (4) members of the Board should the Chairman refuse to call a meeting. Such meetings may be held at any time or place upon five (5) days written notice preceding the date of such meeting. The written notice shall state the place, date, and hour of said meeting and the purpose for which the meeting is called. Said notice shall be delivered or mailed to each member of the Board at his or her regular mailing address.

E. **Quorum:** A quorum for the transaction of any business of the Board shall consist of an absolute majority of all the members of record of the Board. A quorum is necessary for any annual, regular or special meeting of the Board, and when a quorum is not present at any such meeting, a majority of the members present may adjourn the meeting to a time and place without the necessity of further notice to the members.

F. **Executive Director**: The Director of the Department of Finance and Administration shall serve as the Executive Director of the Board and shall be authorized to conduct the administrative affairs of the Board. The Board is authorized to employ on a fulltime basis a staff attorney who shall possess at a minimum the qualifications required to be a member of the Mississippi Bar, and such other staff as it may deem necessary to carry out the purposes of the tort claims statutes; the employees in the positions approved by the Board shall be hired by the Executive Director, shall be employees of the Department of Finance and Administration, and shall be compensated from the Tort Claims Fund. Upon recommendation of the Executive Director the Board shall define the duties and fix the compensation of such employees. The Executive Director shall execute all contracts and other instruments in writing on behalf of the Board which have been duly authorized by the Board. The Executive Director shall be charged with the duty of taking and preserving the official minutes of the meetings of the Board and shall provide copies of the proposed minutes to the members in advance of the next regular meeting. In addition, the Executive Director shall perform such other duties and functions as are incident to the office and not inconsistent with these by-laws.

G. **Rules of Order**: The most recent edition of Robert's Rules of Order shall serve as the rules of order for the Board.

H. **Proxies:** To the extent allowed under Mississippi law, a member of the Board may designate a proxy representative to act for such member in such member's absence, and the vote of such proxy representative shall be counted as the vote of such absent member.

Source: *Miss. Code Ann. §§ 11-46-18; 11-46-19*

Rule 6.2 Committees.

A. **Standing and Special Committees**: The Board shall authorize such committees as it may desire and shall designate whether the same are standing or special. The Authority shall specify the jurisdiction and scope of such standing committees by resolution upon the minutes. Special committees may be created by resolution which shall specify the special purpose and function of said committees.

1. **Appointments**: Standing committees will continue to function from year to year. The Chairman shall make appointments to all standing committees at the annual meeting of the Board. Upon the creation of special committees or standing committees, initial appointments to committees shall be made by the Chairman as soon thereafter as may be convenient.

2. **Committee Minutes**: All committees shall keep minutes of their proceedings which shall be submitted to the Board at its next regular or special meeting.

B. **Amendments**. These by-laws may be amended at any regular annual meeting of the Board without previous notice of any kind whatsoever, or at any regular or special meeting provided that notice is given setting out the subject matter and substance of the proposed amendments, such notice to be given in the manner provided herein for notice of special meetings. Amendments shall require the approval of an absolute majority of the entire member of the Board.

Source: *Miss. Code Ann. §§ 11-46-18; 11-46-19*

Part 301 Chapter 7 <u>Public Access to Records</u>

Rule 7.1 ***Fees.*** The Board shall collect fees for searching, reviewing and/or duplicating public records, together with the cost of mailing, if applicable. The amount charged shall be determined by estimating to the nearest quarter hour the time required for the Administrative Secretary to search, review and/or duplicate the public records and applying the rate of $4 per quarter hour to such estimated time. The actual estimated cost of reproducing ($.45 per page), and the expense of mailing, if any, shall be added to the time charge. The total estimated cost shall be paid in advance of complying with the request for public records.

A. After payment of the cost has been made, the Tort Claims Board shall mail or deliver the records to the applying person no later than 10 working days from the date of such payment.

B. The Tort Claims Board shall notify any applicant in writing if the request to be denied due to exemption of the records from disclosure by virtue of state law. The notification of denial shall be mailed or delivered to the applicant no later than 10 working days after tender of the cost has been made. The cost paid to the Board shall be returned to the applicant.

Source: *Miss. Code Ann. §§ 11-46-19(q); 25-61-1, et seq.*

Part 301 Chapter 8 <u>Regulations for Political Subdivisions</u>

Rule 8.1 ***Insurance Requirements.*** Pursuant to Section 11-46-17(3), Mississippi Code of 1972, as amended, the Tort Claims Board adopts the following regulations respecting the policy or policies of insurance, the requirements for self-insurance reserves, the requirements for pooling agreements and contracts between and among political subdivisions, or combinations of such insurance, reserves and pooling agreements. Approval of the Board shall be conditioned upon fulfilling the requirements of those regulations.

A. **Statutory Exclusions**: The insurance plan may contain any or all of the exclusions, exemptions or defenses set forth in Section 11-46-9, Mississippi Code of 1972, as amended, or in any other provision of state law. If the plan intends to incorporate such exclusions, etc., it shall specifically do so.

B. **Additional Exclusions**: The Board determines that the following additional exclusions or limitations may be incorporated into the plan or policies of insurance for political subdivisions:

Insofar as they are applicable to the state and political subdivisions and are not contrary to Mississippi state statutes or case law, the Board adopts and approves the exclusions and limitations contained in the current version of the ISO Commercial General Liability Form (1988), and the Business Auto Liability Policy CA0001, 11/88 Edition.

C. **Reserves and Retentions**: Self-insurance reserves and/or aggregate retentions may be approved by the Board, but must comply with the following requirements:

1. Amount: Amount of reserve or retention shall be established based on actuarial estimates for a self-insured or pool of similar size and risk exposure.

2. Trust Indenture: The political subdivision shall enter into an agreement with the Tort Claims Board that a Trust Account shall be established with a state depository. The agreement shall provide that only tort claim settlements or judgments, cost of legal defense, third party administrator fees and expenses, and the costs of regulation as determined by the Board shall be paid from the fund. All other related expenses, including liability claims not subject to the tort claims limitations of Section 11-46-1, et seq. of the Mississippi Code of 1972, as amended, shall not be expended from the trust account.

3. Audit by Independent Certified Public Accountancy Firm: An annual compliance audit on the operations and transactions affecting the trust account shall be required. The audit shall be conducted by a certified public accountancy firm and the cost paid by the self-insuring entity.

4. Actuarial Review: An annual actuarial review of reserve adequacy, claim patterns and loss history, with recommendations regarding the initial and annual contribution to the reserve, must be contracted for with an insurance consulting or actuarial firm. Such contract and the initial report and recommendations must accompany the application for approval. Such reports must be furnished to the Tort Claims Board annually.

5. Insurance Policies: All insurance policies constituting all or a portion of the insurance plan must name the Tort Claims Board as additional insured in order that the Board receives direct notification by the carrier of any policy cancellations or changes prior to annual renewal.

6. Annual Reapplication for Approval: The political subdivision shall annually reapply for approval of its self-insured plan or plan of aggregate retention. The information required shall be submitted 60 days before the end of the fiscal year. In the event the application is denied, the political subdivision shall be given 30 days to reapply.

D. **Pooling Agreements**: Pooling of liabilities between and among political subdivisions is authorized by Section 11-46-17(5), of the Mississippi Code of 1972, as amended, subject to the approval of the Board. The Board may require a pooling agreement to provide for adequate excess insurance coverage and umbrella insurance coverage. Pooling agreements shall also be subject to the requirements of Section 103 above.

E. The following categories of political subdivisions shall provide coverage for these types of tort risks:

1. Counties:
   Auto, general, public officials', and law enforcement liability,

2. Municipalities:
   Auto, general, public officials', and law enforcement liability.

3. School Districts:
   Auto, general, public officials' or directors and officers' (depending on whether the trustees are elected or appointed), athletic participation, and professional liability.

4. Community Hospitals:
   Auto, general, directors and officers', law enforcement, and professional liability.

5. Airport Authorities:
   Auto, general, hangar-keeper's, and directors and officers' liability.

6. Community Colleges:
   Auto, general, law enforcement, directors and officers', professional, athletic participation, and student nurses' professional liability.

7. Housing Authorities:
   Auto, general, and directors and officers' liability.

8. Library Systems:
   Auto, general, and directors and officers' liability.

9. Mental Health Services:
   Auto, general, directors and officers', and professional liability.

10. Soil and Water Conservation Districts:
    Auto and general liability.

11. Utility Districts. Gas Districts. and Sewer Districts:
    Auto, general, and directors and officers' liability.

12. Drainage Districts:
Auto and general liability.

13. Economic Development Districts:
Auto, general, and directors and officers' liability.

14. Fire Protection Districts:
Auto and general liability.

15. Miscellaneous Political Subdivisions:
Auto, general, and other liabilities depending on the specific political subdivision's function, authority, etc.

Source: *Miss. Code Ann. §§ 11-46-18; 11-46-19; 11-46-20*

Part 301 Chapter 9 <u>Mississippi Tort Claims Board Application Regulations for Political Subdivisions</u>

Rule 9.1 ***Insurance Requirements for Political Subdivisions.*** The Mississippi Tort Claims Board (the Board) was established pursuant to HB 417, Regular Session 1993, and Section 11-46-1 et seq. of the Mississippi Code of 1972, as amended. Section 11-46-17(3) requires that "All political subdivisions shall, from and after October 1, 1993, obtain such policy or policies of insurance, establish such self insurance reserves, or provide a combination of such insurance and reserves as necessary to cover all risks of claims and suits for which political subdivisions may be liable under this chapter; provided, except any political subdivision shall not be required to obtain pollution liability insurance. However, this shall not limit any cause if action against such political subdivision relative to limits of liability under the Tort Claims Act. Such policy or policies of insurance or such self insurance may contain any reasonable limitations or exclusions not contrary to Mississippi state statutes or case law as are normally included in commercial liability insurance policies generally available to political subdivisions. All such plans of insurance and/or reserves shall be submitted for approval to the Board. The Board shall issue a Certificate of Coverage to each political subdivision whose plan of insurance and/or reserves it approves in the same manner as provided in subsection (2) of this section. Whenever any political subdivision fails to obtain the Board's approval of any plan of insurance and/or reserves, the political subdivision shall act in accordance with the rules and regulations of the Board and obtain a satisfactory plan of insurance and/or reserves to be approved by the board."

A. **Purchase of Liability Insurance**:

1. Any political subdivision purchasing a liability policy or policies shall purchase such policy only from an insurance company with a minimum Best rating of B+, or with a certification from the Department of Insurance, or a determination by the Tort Claims Board, that such insurance company has a sound financial condition. This paragraph shall not be construed as a delegation of authority by the Tort Claims Board to any person or entity, and the Tort Claims Board

specifically reserves unto itself the authority to approve or disapprove such insurance company based on other appropriate criteria.

2. Minimum limits of such liability policies must meet or exceed the statutory limitations of liability as established by the Tort Claims Act.

3. All such policies must be presented to the board in the form of a copy of the declaration page of such policy or policies.

4. Each subdivision shall purchase such insurance and shall present same to the board for approval and issuance of a Certificate of Coverage.

B. **Pooling of Two (2) or More Political Subdivisions:**

1. For the purpose of purchasing one or more liability policies of insurance, all purchases shall be made only from an insurance company with a minimum Best rating of B+ or with a certification from the Department of Insurance that such insurance company has the financial condition equivalent to a minimum Best rating of B+. This paragraph shall not be construed as a delegation of authority by the Tort Claims Board to any person or entity, and the Tort Claims Board specifically reserves unto itself the authority to approve or disapprove such insurance company based on other appropriate criteria.

2. Minimum limits of liability purchased must meet or exceed the limitations of liability as established in the Tort Claims Act.

3. Any two (2) or more political subdivisions agreeing to form a pool and self-insure must submit to the Board plans for establishing adequate amounts to be reserved for payment of claims, amounts reserved to be allocated toward any expenses of the pool, and what funds shall be used to establish said reserves. Each political subdivision participating in said pool shall reveal any and all funds it plans to use to participate in the pool.

4. The Board must be furnished with an executed copy of the pooling agreement supported by appropriate resolutions or orders of the participating political subdivisions. The pooling agreement shall reflect the rights and responsibilities of the participants. The agreement shall provide for insurance over and above the aggregate of the pool assets to minimize further risk to pool participants for additional contributions during the plan year. The first layer of coverage above the pool aggregate shall extend from the pool amount to Five Million Dollars ($5,000,000). If an umbrella coverage is deemed necessary by the Board, an additional amount of such coverage may be required.

C. **A Political Subdivision Self-Insuring Alone**:

1. A political subdivision choosing to self-insure must submit to the Board a plan to establish adequate amounts to be reserved for payment of claims against the political subdivision. Such plan shall reveal those funds to be used to establish reserves, how the self-insurance program shall be administered and how claims against the self-insured shall be paid, as well as expenses for administration, investigation, defense, etc., shall be paid. Any and all funds to be used to establish reserves for payment of claims and expenses must be revealed.

2. In addition to the reserves identified by the applicant, the self-insuring political subdivisions shall be required to obtain a first layer of insurance coverage above the aggregate amount of the reserve. Additional umbrella coverage may also be required in some cases. The amounts and types of such coverages shall be determined by the Board upon submission of application by the political subdivision on a case by case determination.

D. **Submission of Plans for Approval:**

1. All plans for purchasing insurance, formation of a pool by two (2) or more political subdivisions or a political subdivision choosing to self-insure must be submitted to "the Board for approval or rejection. If approved, a Certificate of Coverage shall be issued for the political subdivisions.

2. If a plan is rejected by the Board, or if any political subdivision fails to obtain approval of the Board of any plan of insurance and/or reserves, the political subdivision shall act in accordance with the rules and regulations of the Board and obtain a satisfactory plan of insurance and/or reserves to be approved by the Board.

3. The Board shall have the authority to pursue judicial enforcement of the requirements of Section 11-46-1 et seq. of the Mississippi Code of 1972, as amended and these regulations in any court of competent jurisdiction; and, take all other reasonable and necessary actions to carry out the powers and duties of the Board under Section 11-46-1 et seq. of the Mississippi Code of 1972, as amended and these regulations.

E. **Combinations of Insurance Policies and Reserves**: Any pool or self-insurance plan may contain a combination of insurance policies purchased and adequate reserves established for payment of claims. The plan must be submitted to the Board for approval and any such plan must comply with applicable of Sections 100 through 104 above.

F. **Subrogation Rights:** The Department of Finance and Administration shall have such subrogation rights as prescribed by the Act and Amendments thereof against third parties.

G. **Address**: All applications and communications should be submitted to:

Lee Ann McElroy, Administrator
Mississippi Tort Claims Board
P. O. Box 267
Jackson, MS 39205

Source: *Miss. Code Ann. §§ 11-46-18; 11-46-19; 11-46-20*

Part 301 Chapter 10 <u>Guidelines for the Purchase of Excess Liability Insurance by a State Agency</u>

Rule 10.1 ***Excess Liability Coverage.*** Section 11-46-17(4), Mississippi Code of 1972, as amended, provides: "Any governmental entity of the state may purchase liability insurance to cover claims in excess of the amounts provided for in Section 11-46-15 and may be sued by anyone in excess of the amounts provided for in Section 11-46-15 to the extent of such excess insurance carried; provided, however, that the immunity from suit above the amounts provided for in Section 11-46-15 shall be waived only to the extent of such excess liability insurance carried."

A. Every state agency is protected to the extent of the limitations of liability as provided in the Tort Claims Act. The decision to purchase excess coverage above the statutory limitations of liability is a policy decision of each individual agency. Approval of the Tort Claims Board is not required for purchase of excess coverage; however, the Tort Claims Board does suggest the following guidelines in purchasing any such excess coverage:

1. The statutory limitations of liability as provided in the Tort constitute primary coverage and are mandatory for every state agency.

2. The purchase of any excess coverage should be from an insurance company with a minimum Best rating of B+.

3. A copy of the declaration page of any excess policy should be provided to the Tort Claims Board as the Board must notify the Third Party Administrator of such excess coverage. The Third Party Administrator will notify any excess carrier of any claim that may exceed the statutory limitations of liability.

4. Each agency electing to purchase excess coverage shall submit to the Tort Claims Board, in writing, the reasons the agency believes it is necessary to have a greater amount of protection than that provided in the Tort Claims Act. All such reasons are to be submitted to the legislature annually.

Source: *Miss. Code Ann. §§ 11-46-18; 11-46-19; 11-46-20*

Part 301 Chapter 11 **Additional Exclusions for State Plan.**

Rule 11.1 ***Exclusions from State Plan.*** The Board adopts the exclusions and limitations contained in the current version of ISO Commercial General Liability Form (1988), and the Business Auto Liability Policy CA0001, 11/88 Edition, to be applicable to the Tort Claims Fund operated by the Board for state agencies.

Source: *Miss. Code Ann. §§ 11-46-18; 11-46-19; 11-46-20*

Part 301 Chapter 12 **Hearings.**

Rule 12.1 ***Rules.*** These rules shall govern hearings before the Board on the adequacy of a plan of coverage or any other issue.

A. The Board, in its discretion, may hold a hearing upon its own motion or upon the timely written request for a hearing by a state agency, political subdivision, or any other interested person.

B. The Board may hold, a hearing at any state of its deliberations, including:

1. As part of the initial consideration by the Board of a plan or other issue.

2. After such initial consideration, to receive supplemental information to aid the Board in making a determination.

3. After an adverse decision by the Board, to permit the aggrieved political subdivision or other interested person to submit additional information for use by the Board in reconsidering the adverse decision. Any such request for this type of hearing shall be made within twenty days after the adverse decision by the Board.

C. The Board shall fix the time and place of such hearing and shall notify all parties thereto.

D. The technical rules of evidence shall not be strictly followed. Any relevant evidence may be admitted, but the Chairman may limit or exclude testimony or documents that are redundant or irrelevant. All objections must be timely made or shall be waived.

E. The Board anticipates that in most hearings the party involved shall be a state agency, political subdivision, or an entity, such as a liability pool, representing one or more political subdivisions. The Board recognizes, however, that other persons may from time to time request to appear at the hearings in opposition to the request of a political subdivision. The Board, in its discretion, may allow such a person to participate in the hearing, if the Board determines that the person has a substantial interest in the matter before the Board and that the person's participation would aid the Board in making a decision.

F. All witnesses shall testify under oath.

G. The hearing shall be recorded by a court reporter or other means capable of producing a record that may be used in any judicial appeal of a Board decision.

H. To expedite a hearing, the Chairman may:

1. Require each party to submit to the Board and to exchange with all other parties to the hearing, at least seven days prior to the hearing, a list of all witnesses the party plans to call at the hearing, a brief summary of each witness' expected testimony, and a copy of each document the party plans to introduce.

2. Place time limits on the length of the hearing and vary the amount of time provided in Sections 111 and 115 of this chapter for opening or closing statements.

I. Any party may be represented by counsel.

J. The Chairman shall conduct a fair, impartial, and orderly hearing. After opening the hearing, the Chairman shall:

1. State the matter to be considered.

2. Request all persons present at the hearing (other than Board members and staff), to identify themselves and their interest in the matter under consideration in the hearing.

3. Inform each party that any request that a Board member recuse himself or herself must be made at this point in the hearing or shall be waived.

4. Inform each party that any objection to the manner in which the hearing shall be recorded or to the person recording the hearing must be made at this point in the hearing or shall be waived.

5. If parties with adverse interest are present, inquire as to whether the parties wish to invoke the rule of sequestration.

6. Summarize the procedures to be followed in the hearing.

K. After the announcements by the Chairman, the Board may request the staff to state briefly its recommendation as to the action the Board should take.

L. Then the state agency, political subdivision, or other interested person requesting approval of a plan, reconsideration of a Board decision, or other action may make a brief opening statement not to exceed ten minutes. In addition, any interested person permitted to appear in opposition to the request may make a brief opening statement not to exceed ten minutes.

M. Following the opening statements, the state agency, political subdivision, or other interested person requesting an action by the Board may present evidence through direct testimony of witnesses and introduction of documents. Any interested person permitted to appear in opposition to the request may cross-examine such witnesses. The Chairman may allow redirect examination if he determines that such would be helpful to the Board Members of the Board may question witnesses at any time.

N. Any interested person permitted to appear in opposition to the request may present witnesses and introduce documents in the same procedure set forth in Section 112 of this chapter.

O. At the conclusion of the testimony and introduction of documents, the state agency, political subdivision, or other interested person requesting the action may make a brief closing statement not to exceed fifteen minutes. In addition, any interested person permitted to appear in opposition to the request may make a brief closing statement not to exceed twenty minutes. If an interested person appearing in opposition to the request makes a closing statement, the state agency, political subdivision, or other interested person requesting the action may offer a rebuttal not to exceed five minutes.

P. The Board may issue its decision after the closing statements or take the matter under advisement until a subsequent Board meeting. The Board shall spread its decision upon the minutes and shall notify the parties in writing of the decision.

Q. Notwithstanding any provision contained herein to the contrary, the Board, in its discretion, may appoint a hearing officer to preside at any hearing in the place and stead of the Chairman. In addition, the Board, in its discretion, may authorize the hearing officer to conduct any hearing without the Board being present and to submit to the Board findings of fact, conclusions of law, and recommendations. If the Board should appoint a hearing officer, then in that event every reference to "Chairman" in Chapter 12 Hearings shall refer instead to the hearing officer, and, pursuant to Section 110 of this chapter, each party shall have the opportunity to object to the hearing officer.

Source: *Miss. Code Ann. §§ 11-46-18; 11-46-19; 11-46-20*

Part 301 Chapter 13 <u>Exemptions and Exceptions</u>

Rule 13.1 ***Authority.*** Upon good cause shown, the Board shall have the authority to grant such exemptions and exceptions to these regulations as needed in the opinion of the Board to implement Section 11-46-1 et seq. of the Mississippi Code of 1972, as amended, effectively and efficiently in the best interests of the political subdivisions or the state.

Source: *Miss. Code Ann. §§ 11-46-18; 11-46-19; 11-46-20*

Part 301 Chapter 14 <u>Disposal of Salvage</u>

Rule 14.1 ***Method.*** The Board hereby delegates to the Claims Manager the authority to dispose of all salvage obtained in the settlement or payment of any tort claim at fair market value

by such means and upon such terms as the Claims Manager may think best. Provided, however, that prior to any sale of such salvage the Claims Manager shall ascertain the fair market value of such salvage by requesting offers from at least three salvage yards and shall then sell such salvage to the highest and best offer. All proceeds from the sale of such salvage shall be deposited in the Tort Claims Fund.

Source: *Miss. Code Ann. §§ 11-46-18; 11-46-19; 11-46-20*

Part 301 Chapter 15 Mediation

Rule 15.1 ***Authority.*** The Board shall have the discretionary authority to participate with willing claimants in voluntary non-binding mediation of tort claims against state agencies. The Board shall participate in any mediation ordered by a court pursuant to the mediation rules adopted by the Mississippi Supreme Court.

Source: *Miss. Code Ann. §§ 11-46-18; 11-46-19; 11-46-20*

Part 301 Chapter 16 Position Statement on Single Occurrence Jurisdiction

Rule 16.1 ***Statement.*** It is the stated position of the Mississippi Tort Claims Board as spread upon its minutes of the March 10th, 2005, Board meeting that Mississippi is and has always been, since the beginning effective date of the Tort Claims Act, a "single occurrence" jurisdiction and that notwithstanding the number of parties, recovery is limited to the maximum amount allowed by law.

Source: *Miss. Code Ann. §§ 11-46-18; 11-46-19; 11-46-20*

Part 301 Chapter 17 Board's Authority to Seek Judicial Enforcement

Rule 17.1 **Authority.** The Board shall have the authority to pursue judicial enforcement of the requirements of Section 11-46-1 et seq. of the Mississippi Code of 1972, as amended, and these regulations in any court of competent jurisdiction; and, take all other reasonable and necessary actions to carry out the powers and duties of the board under Section 11-46-1 et seq. of the Mississippi Code of 1972, as amended and these regulations.

Source: *Miss. Code Ann. §§ 11-46-18; 11-46-19; 11-46-20*