Part 1 Chapter 15: Rules Regarding the Administrative Practice and Procedure before the Mississippi Insurance Department.

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Rule 15.01 Statutory Authority

This Regulation is promulgated by the Commissioner of Insurance pursuant to the authority granted to him by Title 83, the Mississippi Insurance Code; the requirements of Mississippi Code Annotated, Section 25-43-1.101, et seq., in accordance with the Mississippi Administrative Procedures Law; and the requirements of Mississippi Code Annotated, Section 25-61-1, et seq., the Mississippi Public Records Act.

Source: *Miss. Code Ann*. §§ 25-43-1.101, et seq.; § 25-61-5; § 83-5-1 (Rev. 2011)

Rule 15.02 Purposes

Mississippi Code Annotated, Section 25-43-2.104 of the Mississippi Administrative Procedures Law, (the "Administrative Procedures Law") requires each agency of state government to (1) adopt as a rule a description of its organization, stating the general course and method of its operations and where and how the public may obtain information or make submissions or requests, and (2) adopt rules of practice setting forth the nature and requirements of all formal and informal proceedings available to the public.

Source: *Miss. Code Ann*. §§25-43-2.104; 83-5-1 (Rev. 2011)

Rule 15.03 Applicability

This Regulation shall be of general applicability and shall apply in all cases except to the extent a statute of the State of Mississippi provides otherwise.

Source: *Miss. Code Ann*. § 25-61-5; 83-5-1 (Rev. 2011)

Rule 15.04 Definitions

A. Department - The Insurance Department of the State of Mississippi.

B. Commissioner - The Insurance Commissioner of the State of Mississippi.

C. Person - Any individual, partnership, corporation, association, reciprocal, exchange, inter-insurer, fraternal benefit society, insurer, company, society, syndicate, business trust, or any public or private organization of any character.

D. Party - Any person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any Department proceeding.

E. Rule - Any Department statement in whole or part of a Department regulation or other statement of general applicability that implements, interprets or prescribes law or policy or the organization, procedure or practice requirements of the Department.

F. Rulemaking - The process for the formulation, adoption, amendment or repeal of a rule pursuant to the Mississippi Administrative Procedures Act.

G. Order - The final disposition of the Department, other than rule-making and/or declaratory opinion, that determines the legal rights, duties privileges, immunities or other legal interest of one or more specific persons after notice and hearing.

H. Adjudication - The process of formulation of an Order.

I. Hearing - A proceeding for consideration or presentation of evidence, facts and matters for adjudication and decision under the Insurance Code.

J. License - Any Department permit, certificate, approval, registration or similar form of permission or record required by law, except a charter, a producer's certificate of authority and an insurance company's certificate of compliance.

K. Licensing - The Departmental process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

L. Application - The request for authority for an action or an issuance by the Commissioner or the Department

M. Charter - The corporate charter of any corporation formed under the laws of Mississippi for the purpose of becoming an Insurer.

N. Certificate of Authority - When used with respect to an insurance producer, a certificate issued by the Commissioner pursuant to Miss. Code Ann. Section 83-17-5. When used with respect to a foreign insurer, a certificate issued by the Commissioner pursuant to Miss. Code Ann. Section 83-21-1.

O. Insurance - A contract of insurance as defined in Miss. Code Ann. Section 83-5-5.

P. Insurer - A "company" or "insurance company" as defined in Miss. Code Ann. Section 83-5-5.

Q. Examination - A test, whether oral, written, or both, to determine the capacity of an applicant to be a producer, broker, solicitor or adjuster.

R. Insurance Code - Mississippi Code Annotated, Title 83.

S. Contested Case - A proceeding, including but not restricted to rate-making, price-fixing and licensing in which the legal rights, duties or privileges of a party are required by law to be determined by the Department after an opportunity for a hearing, other than disciplinary proceedings or Department action involving only employees of the Department.

T. Certificate of Compliance - A certificate issued by the Commissioner to a domestic insurer pursuant to Miss. Code Ann. Section 83-19-5.

U. Administrative Proceeding - the process by which the Department considers a declaratory opinion or a rule pursuant to Article III of the Mississippi Administrative Procedures Law.

V. Agency record - the official rule-making record of an agency pursuant to Miss. Code Ann. Section 25-43-3.112.

W. Declaratory Opinion - a Department opinion rendered in accordance with the provision of Miss. Code Ann. Section 25-43-2.103.

Source: *Miss. Code Ann*. § 83-5-1; § 83-5-3 (Rev. 2011)

Rule 15.05 General Matters; Matters Pertaining to all Proceedings

A. Description of Department

The Insurance Department generally regulates all insurance companies and their producers doing business in the State of Mississippi. The Department's responsibilities include the following; granting or withholding of charters, certificates of authority, certificates of compliance and licenses; approving policies, proxies, and advertising material; conducting hearings on rates and other matters affecting the regulation of the insurance industry in this state; administering and collecting surplus lines premium taxes; receiving and examining financial reports and financial statements from all insurance companies authorized to do business in this state; and preparing annual reports of the Insurance Commissioner.

The Commissioner has the further responsibility for the promulgation of rules and regulations concerning the activities of insurance companies and insurance producers engaged in the

business of insurance in this State. The Insurance Department is composed of several divisions: Administrative Services; Consumer Services; Financial and Market Regulation; Information Technology; Investigation and Consumer Protection; Legal; Life and Health Actuarial; Licensing; Property and Casualty Rating; Public Relations; and Statutory Compliance.

The Insurance Department of the State of Mississippi also houses the State Fire Marshal's Office. The Commissioner of Insurance is by virtue of his office the State Fire Marshal and conducts investigations into all fires of a suspicious nature. The State Fire Marshal's Office is composed of several divisions: Factory-Built Homes/Modular Homes; Fire Code Enforcement; Fire Investigations; Fire Safety Education; Fire Services Development; Liquified Compressed Gas; Pyrotechnics; and Residential Electronic Protection Systems.

B. Offices and Hours - The Office of the Department is located at Suite 1001, Woolfolk State Office Building, 501 West Street, in Jackson, Mississippi. The office shall be open during business hours each day, Saturday, Sunday and holidays excepted. The mailing address of the Department is Post Office Box 79, Jackson, Mississippi 39205, and its telephone number is (601) 359-3569.

C. Custody of Records - the Commissioner shall have custody of the Seal and official records and shall be responsible for the maintenance and custody of the files and records of the Department including the transcripts of testimony and exhibits with all papers and requests filed in proceedings, the minutes of all actions taken by the Department and all of its findings, determinations, reports, opinions, orders, rules, regulations and approved forms.

D. Public Filing - No Department regulation shall be valid or effective against any person or party, nor may it be invoked by the Department for any purpose, until it has been filed and made available for public inspection pursuant to Miss. Code Ann. §§ 25-43-3.102 and 25-43-3.103.

E. Approved Forms - The Department of Insurance has approved and uses various forms in its dealing with the public. Copies of these forms may be obtained by contacting the Department or by viewing the Department's website: www.mid.ms.gov .

F. Examination, Inquiry or Investigation - The Department may, by order of the Commissioner, through one or more of its members especially authorized, conduct at its office in Jackson, Mississippi, or in any part of the State of Mississippi, or elsewhere any examination, inquiry, or investigation, hearing or other proceeding necessary to perform its duties and functions.

G. Authentication - All orders, notices, and other actions of the Department shall be authenticated or signed by the Commissioner or such other person as may be authorized by him.

H. Notice – Except for Notices of Administrative Hearings, the Department shall issue all notices and other process as may be directed by the Commissioner. Absent a statutory provision to the contrary, notice may be given upon a party by delivering a copy to the party, by transmitting it by electronic means, including, but not limited to, facsimile transfer or e-mail, or

by mailing it to the party at the party's last known address. Delivery of a copy shall mean handing it to a party, leaving it at the office of a party with a person in charge thereof, or leaving it at the dwelling house or usual place of abode of the party with some person of suitable age and discretion then residing therein. Notice by electronic means is complete when the electronic equipment being used by the party given notice acknowledges receipt of the material. If the equipment used by the party being served does not automatically acknowledge the transmission, service is not complete until the sending party obtains an acknowledgement from the recipient. Service by mail is complete upon mailing.

I. Notice of Administrative Hearing – Absent a statutory provision to the contrary, the Department shall issue Notices of Administrative Hearing by personal service or certified mail, return receipt requested.

J. Form and Size of Papers and Pleadings - All papers filed with the Department and all exhibits to pleadings and testimony of witnesses shall be printed or typewritten with a clear margin of at least two inches at the top, if typewritten, on one side of the paper only and as far as practicable on paper 8½ x 11 inches (except where exhibits may require a larger sheet).

K. Amendment - The Commissioner may, in his discretion, require any document, filing, pleading or petition to be made more specific and may allow, or of his own motion require, amendments or corrections, or he may cause to be supplied any omissions.

L. Computation of Time - in computing any period of time pursuant to this regulation, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, legal holiday or any other day the Department's office is closed. Should the period of time prescribed be less than seven (7) days, Saturdays, Sundays and legal holidays shall be excluded.

M. Intervention - In any proceeding the Commissioner may permit any person authorized to complain to the Department to intervene and to be heard as an original party.

N. New Parties - The Commissioner may in any proceeding order that any person whose interest will be affected by any Orders be made a party. All parties shall be entitled to have notice of hearings and proceedings and be heard in person or by attorney.

O. Website – The Department website can be accessed at the following link: www.mid.ms.gov . The Department will place information regarding the issuance of Bulletins and the filing of proposed and final Regulations on the website for public access.

Source: *Miss. Code Ann.* §§ 25-43-3.102 and 25-43-3.103; § 25-61-5; § 83-5-1 (Rev. 2011)

Rule 15.06 Licensing of Producers

A. General Provisions

1. Authority and Control of Department - The Department has authority and control over the issuance, grant, denial, refusal, suspension, revocation, termination, continuance, and renewal of licenses for all insurance producers, business entities, solicitors and adjusters operating in Mississippi.

2. License must be returned to Commissioner - Upon suspension or revocation of a license, it shall be forthwith delivered to the Commissioner.

3. Notice and Hearing Required - Notice and hearing in accordance with this Regulation are required before the suspension, revocation, or refusal of a license may be effected. Suspension, refusal or revocation of a license must be for certain statutory causes.

4. Expiration - When a licensee has made a timely and sufficient application for renewal or a new license, with reference to any activity of a continuing nature, the license does not expire until application has been determined. When application is denied or the terms of a new license are limited, then the license expires the last day for review of any Department Order or at a later date if so fixed by a court.

5. Voluntary Surrender - In the event a producer or licensee voluntarily surrenders his license to the Commissioner as a result of an administrative action being taken against the producer or licensee by the Department, the Commissioner may deem that surrender a revocation.

B. Requirements for Appointing Producers

1. A producer must be licensed and obtain a Certificate of Authority by complying with all statutory requirements including but not limited to Title 83, Chapter 17 of the Insurance Code, and upon completing and filing with the Department all necessary forms and providing any other information required by the Department. Copies of such forms and instructions regarding required information may be obtained by contacting the Licensing Division of the Department of Insurance or by viewing the Department's website at www.mid.ms.gov .

2. Privilege license of an individual to act as an insurance producer, limited lines producer, limited lines credit insurance producer, supervising general agent or managing general agent shall be a biennial license and must be renewed by the last day of the month of the licensee's birthday, pursuant to Miss. Code Ann. § 83-17-25.

3. Privilege tax payments (license fees) must be tendered to the Department in the amounts set forth in Title 27, Chapter 15 of the Mississippi Code.

4. Prelicensing and continuing education requirements should be completed as required by Miss. Code Ann. § 83-17-251.

5. Examination - Resident applicants for an original license, or for a renewal license if an examination if required pursuant to Miss. Code Ann. § 83-17-39.

6. Certificate of Authority - a company has fifteen (15) days from the date an agency contract is executed or the first insurance application is submitted to request an appointment of a producer.

C. Cancellation of Certificate of Authority

1. An insurer that terminates their appointment or employment with a producer shall notify the Commissioner within thirty (30) days following the effective date of termination pursuant to Miss. Code Ann. § 83-17-77(1). A form must be signed by an officer of the Company or someone authorized by the company to sign on its behalf. Only original signatures may appear on the form forwarded to the Department. The Department will furnish a suggested form to be used in cancelling Certificates of Authority.

2. The original or a copy of the current Certificate of Authority the Company wishes to cancel should be enclosed with the form.

3. If the Department's form is not used, the Company must list the producer's name, address, and the reason for and date of termination. The identification number for both the company and the producer must also be listed.

D. Requesting a Letter of Certification.

1. A Letter of Certification is necessary when a Mississippi producer is applying for a license in another state.

2. The producer's complete name and identification number must be listed.

3. The fee for use of the Department seal must be tendered to the Department in the amount set forth in Miss. Code Ann. Section 83-5-73.

E. Requesting a Letter of Clearance.

1. A Letter of Clearance is used when a Mississippi producer moves to another state.

2. A letter must be signed by the producer requesting that his Mississippi license be cancelled with the effective date of cancellation indicated therein. The producer must make this request; a company is unable to make this request on behalf of the producer.

3. The producer should return his Mississippi license to the Department.

4. The fee for use of the Department seal must be tendered to the Department in the amount set forth in Miss. Code Ann. § 83-5-73.

Source: *Miss. Code Ann*. §§ 27-15-87; 27-15-91; 83-17-1, et seq. (Rev. 2011)

Rule 15.07 Licensing of Insurers

A. Authority and Control of Department - The Department has authority and control over the issuance, grant, denial, refusal, suspension, revocation, termination, continuation, and renewal of licenses, certificates of authority and certificates of compliance for all insurers.

B. License Returned to Commissioner - Upon suspension or revocation of a license, a certificate of authority or certificate of compliance; it shall be forthwith delivered to the Commissioner.

C. Notice and Hearing Required - Notice and hearing in accordance with this Regulation are required before the suspension, revocation or a license, certificate of authority or certificate of compliance may be effected. Suspension, refusal or revocation of a license, certificate of authority or certificate of compliance must be for certain statutory causes.

D. Expiration - When an insurer has made a timely and sufficient application for renewal or a new license, certificate of authority or certificate of compliance, with reference to any activity of a continuing nature, the license, certificate of authority or certificate of compliance does not expire until application has been determined. When application is denied or the terms of a new license, certificate of authority or certificate of compliance are limited, then the license, certificate of authority or certificate of compliance expires the last day for review of any Department Order or at a later date if so fixed by a court.

E. Domestic Insurers - Domestic insurers may become licensed and obtain a Certificate of Compliance by complying with all statutory requirements, including but not limited to those of Title 83, Chapter 19 of the Insurance Code, completing and filing with the Department all necessary forms and providing any other information required by the Department. Copies of such forms and instructions regarding required information may be obtained by contacting the Department.

F. Foreign Insurers - Foreign insurers may become licensed and obtain a Certificate of Authority by complying with all statutory requirements, including but not limited to those of Title 83, Chapter 21 of the Insurance Code, and completing and filing with the Department all necessary forms and providing any other information required by the Department. Copies of such forms and instructions regarding required information may be obtained by contacting the Department.

G. Non-Admitted Insurers - Insurers may be considered for placement on the Department's eligible list of non-admitted insurers by complying with all statutory requirements, including but not limited to Section 83-21-17 of the Insurance Code, and completing and filing with the Department all necessary forms and providing any other information required by the Department. Copies of such forms and instructions regarding required information may be obtained by contacting the Department.

H. Alien Insurers – Alien insurers must be listed with the Quarterly Listing of Alien Insurers as maintained by the International Insurers Department of the National Association of Insurance Commissioners.

I. Annual Filings - Admitted insurers must annually complete and file with the Department all necessary forms and any other information required by the Department. Copies of such forms and instructions regarding required information may be obtained by contacting the Department.

J. Electronic Mail Address - All Insurance Companies licensed in the State of Mississippi shall be required to provide the Department with an electronic mail address where notification concerning the filing or adoption of a Regulation and/or Bulletin by the Department may be sent. The Department would prefer said electronic mail address be for a division or department of the insurance company and not an individual person. It will be the responsibility of the insurance company to provide the Department with a current, correct electronic mail address. The insurance company will also be responsible with notifying the Department of any change in the electronic mail address. Failure of an insurance company to provide the Department with an electronic mail address will result in the company's inability to receive notice of the filing or adoption of a Regulation or/or Bulletin by the Department.

Source: *Miss. Code Ann*. §§ 83-19-1, et seq.; 83-21-1, et seq. (Rev. 2011)

Rule 15.08 Notice

A. Matters applicable to every Notice of the Department:

1. Notices shall be effective only when in writing, signed by the Commissioner, Deputy Commissioner, or an attorney representing the Commissioner.

2. Every notice shall state its effective date.

3. Every notice shall concisely state:

a. Its intent and purpose

b. The grounds upon which it is based; and

c. The provisions of the statutes pursuant to which action is taken or proposed to be taken; but failure to so designate all applicable provisions shall not deprive the Commissioner of the right to rely thereon.

4. A notice, other than a notice of an administrative action, may be given by service upon or delivery to the person to be notified; mailing it, postage prepaid, addressed to such person at his home or at his principal place of business as last on record in the Department,

or by electronic mail delivery. Absent a statutory provision to the contrary, notice of an administrative action shall be given as defined by Rule 15.05(I) of this Regulation.

Source: *Miss. Code Ann*. § 83-5-1 (Rev. 2011)

Rule 15.09 Hearing and Adjudication

A. Reasonable Notice – All parties shall be afforded opportunity for hearing after reasonable notice. Absent a statutory provision to the contrary, reasonable notice shall be defined as twenty (20) days notice.

B. Evidence May Be Presented – Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

C. Stipulation; Settlement; Consent or Default Not Prohibited– Nothing in these rules shall prohibit informal disposition by stipulation, settlement, consent order or default.

D. Record – The record shall include:

    1. All pleadings motions and intermediate rulings;

    2. All evidence received or considered, including on request of any party a transcript of all proceedings or any part;

    3. A statement of matters officially noticed;

    4. Offers of proof, objections and rulings;

    5. Proposed findings and exceptions;

    6. All staff memoranda or data submitted to the hearing officer in connection with any staff consideration of the matter.

E. Findings Of Fact – Findings of fact shall be based exclusively on the evidence received or on matters officially noticed by the Commissioner through his personal knowledge and expertise.

F. Court Reporter – The Department will not provide a court reporter for the transcription of the testimony offered during hearings; however, any party may provide for a court reporter.

G. Hearings – In every case of adjudication in cases of revocation or suspension of any license or certificate of authority, and in cases of rule-making, where rules must be made after a hearing, and in all cases where required by the Insurance Code, there shall be a hearing.

H. Right To Counsel – Any person appearing before the Department or any of its representatives shall have the right to be represented by counsel.

I. Impartiality – Every member of the Department present shall conduct himself in an impartial manner and the presiding official may withdraw if he deems himself disqualified. Any party may file an affidavit of personal bias or disqualification which shall be ruled upon by the Department and granted if it is timely, sufficient and filed in good faith.

J. Power and Duties of Hearing Officer – The Commissioner may designate a person to act as the hearing officer during a matter. The Hearing officer shall have power to:

1. Maintain order;

2. Rule on all questions arising during the course of the hearing;

3. Permit discovery by deposition or otherwise;

4. Hold conferences for the settlement or simplification of the issues;

5. Make or recommend decisions;

6. Generally, regulate and guide the course of the proceedings.

K. Burden Of Proof – the proponent of a rule or order shall have the burden of proof.

L. Evidence – Irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Any other evidence, oral or documentary, not privileged, may be received if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

M. Objections – Objections to the introductions of evidence may be made and shall be noted of record.

N. Evidence May Be Written – When a hearing can be so expedited, and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.

O. Cross-Examination – Parties shall have the right to conduct such cross-examination as may be required for a full, true disclosure of the facts.

P. Official Notice – Official notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts peculiarly within the Department's specialized knowledge. Parties shall be notified of material so noticed including any staff memoranda or data. Parties shall be afforded a reasonable opportunity to show the contrary.

Q. Final Decision – In every case of adjudication there shall be a final decision, or order, which shall be in writing or stated in the record. The final decision shall include findings of fact and conclusions of law each separately stated. The findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying evidence supporting the findings. If any party submitted proposed findings of fact, the decision shall include a ruling upon each proposed findings.

R. Service of Decision or Order – Parties shall be served either personally or by mail with a copy of any decision or order.

Rule 15.10 Orders

A. Orders- Orders of the Commissioner shall only be effective when in writing.

B. Effective Date - Each Order shall contain its effective date and shall concisely state its intent or purpose and the grounds and pertinent provision of law on which it is based.

C. Order May be Effectuated - An Order is effectuated by proper service upon or delivery to the person or business to whom the Order is addressed by mail, postage prepaid, properly addressed to the place of business or home listed according to the Department records, or by electronic mail.

D. Order Formulated upon Adjudication - There shall be an Order formulated upon each adjudication made by the Department, Commissioner or his Deputy or employee.

E. Public Inspection - In addition to other requirements imposed by any provision of law, and subject to any confidentiality provisions established by law, the Department shall make all written final orders available for public inspection and copying, and reserves the right to post any final order on its website.

Source: *Miss. Code Ann*. § 83-5-1 (Rev. 2011)

Rule 15.11 Rules and Rulemaking

A. Rules and Rulemaking – prior to the adoption, amendment or repeal of any rule or regulation, the Department shall follow the procedure set forth by the Administrative Procedures Act.

B. Public Rulemaking Docket

1. The Department shall maintain a current, public rulemaking docket that may contain a listing of the subject matter of possible rules currently under active consideration within the agency for proposal and the name and address of the Department contact with whom the public may communicate with respect to the matter.

2. All pending rulemaking proceedings shall be contained on the public rulemaking docket. A rulemaking proceeding is pending from the time it is commenced, by proper filing with the Secretary of State, to the time it is terminated or becomes effective.

3. The docket will contain the following:

a. Subject matter of the proposed rule;

b. Citation to all published notices relating to the proceeding;

c. Where written submissions or written requests for an opportunity to make oral presentation on the proposed rule may be inspected;

d. The time during which written submissions may be made;

e. If applicable, where and when oral presentations may be made;

f. Where any economic impact statement and written requests for the issuance of information concerning an economic impact statement of the proposed rule may be inspected;

g. The current status of the proposed rule;

h. The date of the rule's adoption; and

i. When the rule will become effective.

3. Temporary rules issued by the Department are exempt from the public rulemaking procedures.

C. Notice of proposed rule adoption.

1. At least twenty-five (25) days before the adoption of a rule the Department shall give notice to the Secretary of State for publication in the administrative bulletin published by the Secretary of State. The notice of proposed rule adoption will include:

a. An explanation of the purpose of the proposed rule and the Department's reasons for proposing the rule;

b. The specific legal authority authorizing the promulgation of the rule;

c. A reference to all rules repealed, amended or suspended by the proposed rule;

d. The text of the proposed rule;

e. Where, when and how persons may present their views on the proposed rule; and,

f. Where, when and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

2. Within three (3) days after its proper filing with the Secretary of State for publication in the administrative bulletin, the Department shall cause a copy of the notice of proposed rule adoption to be provided to each person who has made a timely request for a copy. The Department may provide the copy by electronic means or by mail. Should the Department provide a copy by mail, the Department may charge a reasonable fee for said costs.

3. The Department shall keep a list of all persons who have made a timely request to be placed on a mailing list maintained by the Department providing notification of proposed rule adoptions.

D. Public Participation

1. After proper filing with the Secretary of State of the notice of proposed rule adoption, the Department will allow twenty-five (25) days for all interested parties to submit in writing any arguments, data and views on the proposed rule.

2. The Department may schedule an oral proceeding on any proposed rule. The Department shall schedule an oral hearing on any proposed rule if, within twenty (20) days after the proper filing of the notice of proposed rule, a written request for an oral hearing is submitted by a political subdivision, an agency or ten (10) persons.

3. If an oral hearing is held, it shall not be held earlier than twenty (20) days notice must be properly filed with the Secretary of State for publication in the administrative bulletin. Within three (3) days after proper filing with the Secretary of State, a copy of the notice must be mailed to each person who has made a timely request for notification of proposed rule adoptions. The notice shall contain the time and place of the public hearing.

4. All oral hearings shall be open to the public. The Department will not provide an official transcript of the hearing to the public. Participants may preserve the record by stenographic or other means.

5. The public hearing shall be presided over by the Commissioner or someone duly appointed by the Commissioner to appear on his behalf.

6. Statutory provisions governing formal hearings and adjudicatory proceedings will not apply to informal rule action proceedings described in this Regulation. The hearing officer shall determine all procedural questions not governed by this Regulation and shall have the authority to limit the number of witnesses and to impose such time and presentation limitations as deemed reasonable. Any public hearing held shall be non-adversarial,

fact finding proceeding, and any rule action taken need not be based exclusively on the record of such hearing.

7. The hearing officer has the authority to exclude data or materials deemed to be improper or irrelevant. Formal rules of evidence shall not apply.

8. All timely comments will be considered in taking any final rule action. All rule actions proposed pursuant to this regulation shall be effective upon the Department's provision of the rule or statement of repeal thereof to the office of the Secretary of State. However, no rule shall become effective prior to the time limits imposed by Miss. Code Ann. § 25-43-4.106.

9. An action to contest the validity of a rule on the grounds of its noncompliance with any provisions of Sections 25-43-3.102 through 25-43-3.110 must be commenced within one (1) year of the effective date of the rule.

E. Right of Petition - Any person may petition for the issuance, amendment or repeal of any Rule. Within thirty days after submission of a petition the Department shall either deny the petition in writing or shall initiate rulemaking proceedings.

Source: *Miss. Code Ann*. § 25-43-1.101, et seq. (Rev. 2011)

Rule 15.12 Declaratory Opinions

A. Any person who holds a substantial interest in the subject matter may make a written request of the Department for a declaratory opinion as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the Department.

B. All requests for a Declaratory Opinion shall be made in writing and must clearly set forth the specific facts upon which the opinion is requested and shall be limited to a single transaction or occurrence. The written request must also clearly establish the requestor's substantial interest in the subject matter.

C. The Department, within forty five (45) days of receipt of request, will in writing do one of the following

1. Issue an opinion;

2. Agree to issue a declaratory opinion but extend time of the release of opinion by no more than ninety days from the date of the request; or

3. Decline to issue a declaratory opinion. The Department may decline to issue a declaratory opinion if such opinion would affect an ongoing investigation, administrative action or legal action. No request for declaratory opinion shall be considered if a court action or prosecution has begun.

D. When any persons receives a declaratory opinion from the Department and shall have stated all the facts to govern such opinion, the Department shall take no civil or criminal action against such person who, in good faith, follows the direction of such opinion and acts in accordance therewith unless a court of competent jurisdiction, after a full hearing, shall judicially declare that such opinion is manifestly wrong and without any substantial support. No declaratory opinion shall be binding or effective for any third party or persons.

E. All declaratory opinions issued by the Department shall be available for public inspection and copying, subject to any confidentiality provisions or public records disclosures established by law.

Source: *Miss. Code Ann*. § 25-43-1.101, et seq. (Rev. 2011)

Rule 15.13 Effective Date

This Regulation shall become effective thirty (30) days after final adoption with the Office of the Secretary of State.

Source: *Miss. Code Ann*. § 25-43-3.112 (Rev. 2011)

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Rule 15.01 Statutory Authority

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Source: *Miss. Code Ann*. §§ 25-43-1.101, et seq.; § 25-61-5; § 83-5-1 (Rev. 2011)

Rule 15.02 Purposes

Mississippi Code Annotated, Section 25-43-2.104 of the Mississippi Administrative Procedures Law, (the "Administrative Procedures Law") requires each agency of state government to (1) adopt as a rule a description of its organization, stating the general course and method of its operations and where and how the public may obtain information or make submissions or requests, and (2) adopt rules of practice setting forth the nature and requirements of all formal and informal proceedings available to the public.

Source: *Miss. Code Ann*. §§25-43-2.104; 83-5-1 (Rev. 2011)

Rule 15.03 Applicability

This Regulation shall be of general applicability and shall apply in all cases except to the extent a statute of the State of Mississippi provides otherwise.

Source: *Miss. Code Ann*. § 25-61-5; 83-5-1 (Rev. 2011)

Rule 15.04 Definitions

A. Department - The Insurance Department of the State of Mississippi.

B. Commissioner - The Insurance Commissioner of the State of Mississippi.

C. Person - Any individual, partnership, corporation, association, reciprocal, exchange, inter-insurer, fraternal benefit society, insurer, company, society, syndicate, business trust, or any public or private organization of any character.

D. Party - Any person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any Department proceeding.

E. Rule - Any Department statement in whole or part of a Department regulation or other statement of general applicability that implements, interprets or prescribes law or policy or the organization, procedure or practice requirements of the Department.

F. Rulemaking - The process for the formulation, adoption, amendment or repeal of a rule pursuant to the Mississippi Administrative Procedures Act.

G. Order - The final disposition of the Department, other than rule-making and/or declaratory opinion, that determines the legal rights, duties privileges, immunities or other legal interest of one or more specific persons after notice and hearing.

H. Adjudication - The process of formulation of an Order.

I. Hearing - A proceeding for consideration or presentation of evidence, facts and matters for adjudication and decision under the Insurance Code.

J. License - Any Department permit, certificate, approval, registration or similar form of permission or record required by law, except a charter, a producer's certificate of authority and an insurance company's certificate of compliance.

K. Licensing - The Departmental process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

L. Application - The request for authority for an action or an issuance by the Commissioner or the Department

M. Charter - The corporate charter of any corporation formed under the laws of Mississippi for the purpose of becoming an Insurer.

N. Certificate of Authority - When used with respect to an insurance producer, a certificate issued by the Commissioner pursuant to Miss. Code Ann. Section 83-17-5. When used with respect to a foreign insurer, a certificate issued by the Commissioner pursuant to Miss. Code Ann. Section 83-21-1.

O. Insurance - A contract of insurance as defined in Miss. Code Ann. Section 83-5-5.

P. Insurer - A "company" or "insurance company" as defined in Miss. Code Ann. Section 83-5-5.

Q. Examination - A test, whether oral, written, or both, to determine the capacity of an applicant to be a producer, broker, solicitor or adjuster.

R. Insurance Code - Mississippi Code Annotated, Title 83.

S. Contested Case - A proceeding, including but not restricted to rate-making, price-fixing and licensing in which the legal rights, duties or privileges of a party are required by law to be determined by the Department after an opportunity for a hearing, other than disciplinary proceedings or Department action involving only employees of the Department.

T. Certificate of Compliance - A certificate issued by the Commissioner to a domestic insurer pursuant to Miss. Code Ann. Section 83-19-5.

U. Administrative Proceeding - the process by which the Department considers a declaratory opinion or a rule pursuant to Article III of the Mississippi Administrative Procedures Law.

V. Agency record - the official rule-making record of an agency pursuant to Miss. Code Ann. Section 25-43-3.112.

W. Declaratory Opinion - a Department opinion rendered in accordance with the provision of Miss. Code Ann. Section 25-43-2.103.

Source: *Miss. Code Ann*. § 83-5-1; § 83-5-3 (Rev. 2011)

Rule 15.05 General Matters; Matters Pertaining to all Proceedings

A. Description of Department

The Insurance Department generally regulates all insurance companies and their producers doing business in the State of Mississippi. The Department's responsibilities include the following; granting or withholding of charters, certificates of authority, certificates of compliance and licenses; approving policies, proxies, and advertising material; conducting hearings on rates and other matters affecting the regulation of the insurance industry in this state; administering and collecting surplus lines premium taxes; receiving and examining financial reports and financial statements from all insurance companies authorized to do business in this state; and preparing annual reports of the Insurance Commissioner.

The Commissioner has the further responsibility for the promulgation of rules and regulations concerning the activities of insurance companies and insurance producers engaged in the

business of insurance in this State. The Insurance Department is composed of several divisions: Administrative Services; Consumer Services; Financial and Market Regulation; Information Technology; Investigation and Consumer Protection; Legal; Life and Health Actuarial; Licensing; Property and Casualty Rating; Public Relations; and Statutory Compliance.

The Insurance Department of the State of Mississippi also houses the State Fire Marshal's Office. The Commissioner of Insurance is by virtue of his office the State Fire Marshal and conducts investigations into all fires of a suspicious nature. The State Fire Marshal's Office is composed of several divisions: Factory-Built Homes/Modular Homes; Fire Code Enforcement; Fire Investigations; Fire Safety Education; Fire Services Development; Liquified Compressed Gas; Pyrotechnics; and Residential Electronic Protection Systems.

B. Offices and Hours - The Office of the Department is located at Suite 1001, Woolfolk State Office Building, 501 West Street, in Jackson, Mississippi. The office shall be open during business hours each day, Saturday, Sunday and holidays excepted. The mailing address of the Department is Post Office Box 79, Jackson, Mississippi 39205, and its telephone number is (601) 359-3569.

C. Custody of Records - the Commissioner shall have custody of the Seal and official records and shall be responsible for the maintenance and custody of the files and records of the Department including the transcripts of testimony and exhibits with all papers and requests filed in proceedings, the minutes of all actions taken by the Department and all of its findings, determinations, reports, opinions, orders, rules, regulations and approved forms.

D. Public Filing - No Department regulation shall be valid or effective against any person or party, nor may it be invoked by the Department for any purpose, until it has been filed and made available for public inspection pursuant to Miss. Code Ann. §§ 25-43-3.102 and 25-43-3.103.

E. Approved Forms - The Department of Insurance has approved and uses various forms in its dealing with the public. Copies of these forms may be obtained by contacting the Department or by viewing the Department's website: www.mid.ms.gov .

F. Examination, Inquiry or Investigation - The Department may, by order of the Commissioner, through one or more of its members especially authorized, conduct at its office in Jackson, Mississippi, or in any part of the State of Mississippi, or elsewhere any examination, inquiry, or investigation, hearing or other proceeding necessary to perform its duties and functions.

G. Authentication - All orders, notices, and other actions of the Department shall be authenticated or signed by the Commissioner or such other person as may be authorized by him.

H. Notice – Except for Notices of Administrative Hearings, the Department shall issue all notices and other process as may be directed by the Commissioner. Absent a statutory provision to the contrary, notice may be given upon a party by delivering a copy to the party, by transmitting it by electronic means, including, but not limited to, facsimile transfer or e-mail, or

by mailing it to the party at the party's last known address. Delivery of a copy shall mean handing it to a party, leaving it at the office of a party with a person in charge thereof, or leaving it at the dwelling house or usual place of abode of the party with some person of suitable age and discretion then residing therein. Notice by electronic means is complete when the electronic equipment being used by the party given notice acknowledges receipt of the material. If the equipment used by the party being served does not automatically acknowledge the transmission, service is not complete until the sending party obtains an acknowledgement from the recipient. Service by mail is complete upon mailing.

I. Notice of Administrative Hearing – Absent a statutory provision to the contrary, the Department shall issue Notices of Administrative Hearing by personal service or certified mail, return receipt requested.

J. Form and Size of Papers and Pleadings - All papers filed with the Department and all exhibits to pleadings and testimony of witnesses shall be printed or typewritten with a clear margin of at least two inches at the top, if typewritten, on one side of the paper only and as far as practicable on paper 8½ x 11 inches (except where exhibits may require a larger sheet).

K. Amendment - The Commissioner may, in his discretion, require any document, filing, pleading or petition to be made more specific and may allow, or of his own motion require, amendments or corrections, or he may cause to be supplied any omissions.

L. Computation of Time - in computing any period of time pursuant to this regulation, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, legal holiday or any other day the Department's office is closed. Should the period of time prescribed be less than seven (7) days, Saturdays, Sundays and legal holidays shall be excluded.

M. Intervention - In any proceeding the Commissioner may permit any person authorized to complain to the Department to intervene and to be heard as an original party.

N. New Parties - The Commissioner may in any proceeding order that any person whose interest will be affected by any Orders be made a party. All parties shall be entitled to have notice of hearings and proceedings and be heard in person or by attorney.

O. Website – The Department website can be accessed at the following link: www.mid.ms.gov . The Department will place information regarding the issuance of Bulletins and the filing of proposed and final Regulations on the website for public access.

Source: *Miss. Code Ann.* §§ 25-43-3.102 and 25-43-3.103; § 25-61-5; § 83-5-1 (Rev. 2011)

Rule 15.06 Licensing of Producers

A. General Provisions

1. Authority and Control of Department - The Department has authority and control over the issuance, grant, denial, refusal, suspension, revocation, termination, continuance, and renewal of licenses for all insurance producers, business entities, solicitors and adjusters operating in Mississippi.

2. License must be returned to Commissioner - Upon suspension or revocation of a license, it shall be forthwith delivered to the Commissioner.

3. Notice and Hearing Required - Notice and hearing in accordance with this Regulation are required before the suspension, revocation, or refusal of a license may be effected. Suspension, refusal or revocation of a license must be for certain statutory causes.

4. Expiration - When a licensee has made a timely and sufficient application for renewal or a new license, with reference to any activity of a continuing nature, the license does not expire until application has been determined. When application is denied or the terms of a new license are limited, then the license expires the last day for review of any Department Order or at a later date if so fixed by a court.

5. Voluntary Surrender - In the event a producer or licensee voluntarily surrenders his license to the Commissioner as a result of an administrative action being taken against the producer or licensee by the Department, the Commissioner may deem that surrender a revocation.

B. Requirements for Appointing Producers

1. A producer must be licensed and obtain a Certificate of Authority by complying with all statutory requirements including but not limited to Title 83, Chapter 17 of the Insurance Code, and upon completing and filing with the Department all necessary forms and providing any other information required by the Department. Copies of such forms and instructions regarding required information may be obtained by contacting the Licensing Division of the Department of Insurance or by viewing the Department's website at www.mid.ms.gov .

2. Privilege license of an individual to act as an insurance producer, limited lines producer, limited lines credit insurance producer, supervising general agent or managing general agent shall be a biennial license and must be renewed by the last day of the month of the licensee's birthday, pursuant to Miss. Code Ann. § 83-17-25.

3. Privilege tax payments (license fees) must be tendered to the Department in the amounts set forth in Title 27, Chapter 15 of the Mississippi Code.

4. Prelicensing and continuing education requirements should be completed as required by Miss. Code Ann. § 83-17-251.

5. Examination - Resident applicants for an original license, or for a renewal license if an examination if required pursuant to Miss. Code Ann. § 83-17-39.

6. Certificate of Authority - a company has fifteen (15) days from the date an agency contract is executed or the first insurance application is submitted to request an appointment of a producer.

C. Cancellation of Certificate of Authority

1. An insurer that terminates their appointment or employment with a producer shall notify the Commissioner within thirty (30) days following the effective date of termination pursuant to Miss. Code Ann. § 83-17-77(1). A form must be signed by an officer of the Company or someone authorized by the company to sign on its behalf. Only original signatures may appear on the form forwarded to the Department. The Department will furnish a suggested form to be used in cancelling Certificates of Authority.

2. The original or a copy of the current Certificate of Authority the Company wishes to cancel should be enclosed with the form.

3. If the Department's form is not used, the Company must list the producer's name, address, and the reason for and date of termination. The identification number for both the company and the producer must also be listed.

D. Requesting a Letter of Certification.

1. A Letter of Certification is necessary when a Mississippi producer is applying for a license in another state.

2. The producer's complete name and identification number must be listed.

3. The fee for use of the Department seal must be tendered to the Department in the amount set forth in Miss. Code Ann. Section 83-5-73.

E. Requesting a Letter of Clearance.

1. A Letter of Clearance is used when a Mississippi producer moves to another state.

2. A letter must be signed by the producer requesting that his Mississippi license be cancelled with the effective date of cancellation indicated therein. The producer must make this request; a company is unable to make this request on behalf of the producer.

3. The producer should return his Mississippi license to the Department.

4. The fee for use of the Department seal must be tendered to the Department in the amount set forth in Miss. Code Ann. § 83-5-73.

Source: *Miss. Code Ann*. §§ 27-15-87; 27-15-91; 83-17-1, et seq. (Rev. 2011)

Rule 15.07 Licensing of Insurers

A. Authority and Control of Department - The Department has authority and control over the issuance, grant, denial, refusal, suspension, revocation, termination, continuation, and renewal of licenses, certificates of authority and certificates of compliance for all insurers.

B. License Returned to Commissioner - Upon suspension or revocation of a license, a certificate of authority or certificate of compliance; it shall be forthwith delivered to the Commissioner.

C. Notice and Hearing Required - Notice and hearing in accordance with this Regulation are required before the suspension, revocation or a license, certificate of authority or certificate of compliance may be effected. Suspension, refusal or revocation of a license, certificate of authority or certificate of compliance must be for certain statutory causes.

D. Expiration - When an insurer has made a timely and sufficient application for renewal or a new license, certificate of authority or certificate of compliance, with reference to any activity of a continuing nature, the license, certificate of authority or certificate of compliance does not expire until application has been determined. When application is denied or the terms of a new license, certificate of authority or certificate of compliance are limited, then the license, certificate of authority or certificate of compliance expires the last day for review of any Department Order or at a later date if so fixed by a court.

E. Domestic Insurers - Domestic insurers may become licensed and obtain a Certificate of Compliance by complying with all statutory requirements, including but not limited to those of Title 83, Chapter 19 of the Insurance Code, completing and filing with the Department all necessary forms and providing any other information required by the Department. Copies of such forms and instructions regarding required information may be obtained by contacting the Department.

F. Foreign Insurers - Foreign insurers may become licensed and obtain a Certificate of Authority by complying with all statutory requirements, including but not limited to those of Title 83, Chapter 21 of the Insurance Code, and completing and filing with the Department all necessary forms and providing any other information required by the Department. Copies of such forms and instructions regarding required information may be obtained by contacting the Department.

G. Non-Admitted Insurers - Insurers may be considered for placement on the Department's eligible list of non-admitted insurers by complying with all statutory requirements, including but not limited to Section 83-21-17 of the Insurance Code, and completing and filing with the Department all necessary forms and providing any other information required by the Department. Copies of such forms and instructions regarding required information may be obtained by contacting the Department.

H. Alien Insurers – Alien insurers must be listed with the Quarterly Listing of Alien Insurers as maintained by the International Insurers Department of the National Association of Insurance Commissioners.

I. Annual Filings - Admitted insurers must annually complete and file with the Department all necessary forms and any other information required by the Department. Copies of such forms and instructions regarding required information may be obtained by contacting the Department.

J. Electronic Mail Address - All Insurance Companies licensed in the State of Mississippi shall be required to provide the Department with an electronic mail address where notification concerning the filing or adoption of a Regulation and/or Bulletin by the Department may be sent. The Department would prefer said electronic mail address be for a division or department of the insurance company and not an individual person. It will be the responsibility of the insurance company to provide the Department with a current, correct electronic mail address. The insurance company will also be responsible with notifying the Department of any change in the electronic mail address. Failure of an insurance company to provide the Department with an electronic mail address will result in the company's inability to receive notice of the filing or adoption of a Regulation or/or Bulletin by the Department.

Source: *Miss. Code Ann*. §§ 83-19-1, et seq.; 83-21-1, et seq. (Rev. 2011)

Rule 15.08 Notice

A. Matters applicable to every Notice of the Department:

1. Notices shall be effective only when in writing, signed by the Commissioner, Deputy Commissioner, or an attorney representing the Commissioner.

2. Every notice shall state its effective date.

3. Every notice shall concisely state:

a. Its intent and purpose

b. The grounds upon which it is based; and

c. The provisions of the statutes pursuant to which action is taken or proposed to be taken; but failure to so designate all applicable provisions shall not deprive the Commissioner of the right to rely thereon.

4. A notice, other than a notice of an administrative action, may be given by service upon or delivery to the person to be notified; mailing it, postage prepaid, addressed to such person at his home or at his principal place of business as last on record in the Department,

or by electronic mail delivery. Absent a statutory provision to the contrary, notice of an administrative action shall be given as defined by ~~Section (5)(J)~~ Rule 15.05(I) of this Regulation.

Source: *Miss. Code Ann*. § 83-5-1 (Rev. 2011)

Rule 15.09 Hearing and Adjudication

A. Reasonable Notice – All parties shall be afforded opportunity for hearing after reasonable notice. Absent a statutory provision to the contrary, reasonable notice shall be defined as twenty (20) days notice.

B. Evidence May Be Presented – Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

C. Stipulation; Settlement; Consent or Default Not Prohibited– Nothing in these rules shall prohibit informal disposition by stipulation, settlement, consent order or default.

D. Record – The record shall include:

    1. All pleadings motions and intermediate rulings;

    2. All evidence received or considered, including on request of any party a transcript of all proceedings or any part;

    3. A statement of matters officially noticed;

    4. Offers of proof, objections and rulings;

    5. Proposed findings and exceptions;

    6. All staff memoranda or data submitted to the hearing officer in connection with any staff consideration of the matter.

E. Findings Of Fact – Findings of fact shall be based exclusively on the evidence received or on matters officially noticed by the Commissioner through his personal knowledge and expertise.

F. Court Reporter – The Department will not provide a court reporter for the transcription of the testimony offered during hearings; however, any party may provide for a court reporter.

G. Hearings – In every case of adjudication in cases of revocation or suspension of any license or certificate of authority, and in cases of rule-making, where rules must be made after a hearing, and in all cases where required by the Insurance Code, there shall be a hearing.

H. Right To Counsel – Any person appearing before the Department or any of its representatives shall have the right to be represented by counsel.

I. Impartiality – Every member of the Department present shall conduct himself in an impartial manner and the presiding official may withdraw if he deems himself disqualified. Any party may file an affidavit of personal bias or disqualification which shall be ruled upon by the Department and granted if it is timely, sufficient and filed in good faith.

J. Power and Duties of Hearing Officer – The Commissioner may designate a person to act as the hearing officer during a matter. The Hearing officer shall have power to:

1. Maintain order;

2. Rule on all questions arising during the course of the hearing;

3. Permit discovery by deposition or otherwise;

4. Hold conferences for the settlement or simplification of the issues;

5. Make or recommend decisions;

6. Generally, regulate and guide the course of the proceedings.

K. Burden Of Proof – the proponent of a rule or order shall have the burden of proof.

L. Evidence – Irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Any other evidence, oral or documentary, not privileged, may be received if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

M. Objections – Objections to the introductions of evidence may be made and shall be noted of record.

N. Evidence May Be Written – When a hearing can be so expedited, and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.

O. Cross-Examination – Parties shall have the right to conduct such cross-examination as may be required for a full, true disclosure of the facts.

P. Official Notice – Official notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts peculiarly within the Department's specialized knowledge. Parties shall be notified of material so noticed including any staff memoranda or data. Parties shall be afforded a reasonable opportunity to show the contrary.

Q. Final Decision – In every case of adjudication there shall be a final decision, or order, which shall be in writing or stated in the record. The final decision shall include findings of fact and conclusions of law each separately stated. The findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying evidence supporting the findings. If any party submitted proposed findings of fact, the decision shall include a ruling upon each proposed findings.

R. Service of Decision or Order – Parties shall be served either personally or by mail with a copy of any decision or order.

Rule 15.10 Orders

A. Orders- Orders of the Commissioner shall only be effective when in writing.

B. Effective Date - Each Order shall contain its effective date and shall concisely state its intent or purpose and the grounds and pertinent provision of law on which it is based.

C. Order May be Effectuated - An Order is effectuated by proper service upon or delivery to the person or business to whom the Order is addressed by mail, postage prepaid, properly addressed to the place of business or home listed according to the Department records, or by electronic mail.

D. Order Formulated upon Adjudication - There shall be an Order formulated upon each adjudication made by the Department, Commissioner or his Deputy or employee.

E. Public Inspection - In addition to other requirements imposed by any provision of law, and subject to any confidentiality provisions established by law, the Department shall make all written final orders available for public inspection and copying, and reserves the right to post any final order on its website.

Source: *Miss. Code Ann*. § 83-5-1 (Rev. 2011)

Rule 15.11 Rules and Rulemaking

A. Rules and Rulemaking – prior to the adoption, amendment or repeal of any rule or regulation, the Department shall follow the procedure set forth by the Administrative Procedures Act.

B. Public Rulemaking Docket

1. The Department shall maintain a current, public rulemaking docket that may contain a listing of the subject matter of possible rules currently under active consideration within the agency for proposal and the name and address of the Department contact with whom the public may communicate with respect to the matter.

2. All pending rulemaking proceedings shall be contained on the public rulemaking docket. A rulemaking proceeding is pending from the time it is commenced, by proper filing with the Secretary of State, to the time it is terminated or becomes effective.

3. The docket will contain the following:

a. Subject matter of the proposed rule;

b. Citation to all published notices relating to the proceeding;

c. Where written submissions or written requests for an opportunity to make oral presentation on the proposed rule may be inspected;

d. The time during which written submissions may be made;

e. If applicable, where and when oral presentations may be made;

f. Where any economic impact statement and written requests for the issuance of information concerning an economic impact statement of the proposed rule may be inspected;

g. The current status of the proposed rule;

h. The date of the rule's adoption; and

i. When the rule will become effective.

4. Temporary rules issued by the Department are exempt from the public rulemaking procedures.

C. Notice of proposed rule adoption.

1. At least twenty-five (25) days before the adoption of a rule the Department shall give notice to the Secretary of State for publication in the administrative bulletin published by the Secretary of State. The notice of proposed rule adoption will include:

a. An explanation of the purpose of the proposed rule and the Department's reasons for proposing the rule;

b. The specific legal authority authorizing the promulgation of the rule;

c. A reference to all rules repealed, amended or suspended by the proposed rule;

d. The text of the proposed rule;

e. Where, when and how persons may present their views on the proposed rule; and,

f. Where, when and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

2. Within three (3) days after its proper filing with the Secretary of State for publication in the administrative bulletin, the Department shall cause a copy of the notice of proposed rule adoption to be provided to each person who has made a timely request for a copy. The Department may provide the copy by electronic means or by mail. Should the Department provide a copy by mail, the Department may charge a reasonable fee for said costs.

3. The Department shall keep a list of all persons who have made a timely request to be placed on a mailing list maintained by the Department providing notification of proposed rule adoptions.

D. Public Participation

1. After proper filing with the Secretary of State of the notice of proposed rule adoption, the Department will allow twenty-five (25) days for all interested parties to submit in writing any arguments, data and views on the proposed rule.

2. The Department may schedule an oral proceeding on any proposed rule. The Department shall schedule an oral hearing on any proposed rule if, within twenty (20) days after the proper filing of the notice of proposed rule, a written request for an oral hearing is submitted by a political subdivision, an agency or ten (10) persons.

3. If an oral hearing is held, it shall not be held earlier than twenty (20) days notice must be properly filed with the Secretary of State for publication in the administrative bulletin. Within three (3) days after proper filing with the Secretary of State, a copy of the notice must be mailed to each person who has made a timely request for notification of proposed rule adoptions. The notice shall contain the time and place of the public hearing.

4. All oral hearings shall be open to the public. The Department will not provide an official transcript of the hearing to the public. Participants may preserve the record by stenographic or other means.

5. The public hearing shall be presided over by the Commissioner or someone duly appointed by the Commissioner to appear on his behalf.

6. Statutory provisions governing formal hearings and adjudicatory proceedings will not apply to informal rule action proceedings described in this Regulation. The hearing officer shall determine all procedural questions not governed by this Regulation and shall have the authority to limit the number of witnesses and to impose such time and presentation limitations as deemed reasonable. Any public hearing held shall be non-adversarial,

fact finding proceeding, and any rule action taken need not be based exclusively on the record of such hearing.

7. The hearing officer has the authority to exclude data or materials deemed to be improper or irrelevant. Formal rules of evidence shall not apply.

8. All timely comments will be considered in taking any final rule action. All rule actions proposed pursuant to this regulation shall be effective upon the Department's provision of the rule or statement of repeal thereof to the office of the Secretary of State. However, no rule shall become effective prior to the time limits imposed by Miss. Code Ann. § 25-43-4.106.

9. ~~Any person aggrieved by an act of the Commissioner with regard to the adoption, amendment or repeal of any rule may file a petition for review of an adverse ruling within five (5) days after receipt of notice thereof in the case of those who have made timely requests of the Department for advance notice of the Department's rulemaking procedure and ten days for all other interested persons.~~ An action to contest the validity of a rule on the grounds of its noncompliance with any provisions of Sections 25-43-3.102 through 25-43-3.110 must be commenced within one (1) year of the effective date of the rule.

~~10. Except as otherwise provided by law, the Commissioner shall issue a decision on all petitions for review of adverse rulings no later than ten days after the date of a filing of any exceptions.~~

E. Right of Petition - Any person may petition for the issuance, amendment or repeal of any Rule. Within thirty days after submission of a petition the Department shall either deny the petition in writing or shall initiate rulemaking proceedings.

Source: *Miss. Code Ann*. § 25-43-1.101, et seq. (Rev. 2011)

Rule 15.12 Declaratory Opinions

A. Any person who holds a substantial interest in the subject matter may make a written request of the Department for a declaratory opinion as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the Department.

B. All requests for a Declaratory Opinion shall be made in writing and must clearly set forth the specific facts upon which the opinion is requested and shall be limited to a single transaction or occurrence. The written request must also clearly establish the requestor's substantial interest in the subject matter.

C. The Department, within forty five (45) days of receipt of request, will in writing do one of the following

1. Issue an opinion;

2. Agree to issue a declaratory opinion but extend time of the release of opinion by no more than ninety days from the date of the request; or

3. Decline to issue a declaratory opinion. The Department may decline to issue a declaratory opinion if such opinion would affect an ongoing investigation, administrative action or legal action. No request for declaratory opinion shall be considered if a court action or prosecution has begun.

D. When any persons receives a declaratory opinion from the Department and shall have stated all the facts to govern such opinion, the Department shall take no civil or criminal action against such person who, in good faith, follows the direction of such opinion and acts in accordance therewith unless a court of competent jurisdiction, after a full hearing, shall judicially declare that such opinion is manifestly wrong and without any substantial support. No declaratory opinion shall be binding or effective for any third party or persons.

E. All declaratory opinions issued by the Department shall be available for public inspection and copying, subject to any confidentiality provisions or public records disclosures established by law.

Source: *Miss. Code Ann*. § 25-43-1.101, et seq. (Rev. 2011)

Rule 15.13 Effective Date

This Regulation shall become effective thirty (30) days after final adoption with the Office of the Secretary of State.

Source: *Miss. Code Ann*. § 25-43-3.112 (Rev. 2011)