

The Mississippi Department of Marine Resources (MDMR) does hereby give public notice that on February 20, 2019 at the regularly scheduled meeting of the Commission on Marine Resources, the Commission approved a Notice of Intent to update, modify and change below listed sections of Title 22 Part 20. Said Notice of Intent was filed with the Mississippi Secretary of State's office on February 20, 2019. A complete copy of Title 22 Part 20 and the proposed changes are available at [www.dmr.ms.gov](http://www.dmr.ms.gov). Public comments on the proposed regulation changes will be accepted through March 18, 2019. All comments should be mailed to the MDMR, Attn: Joe Jewell, 1141 Bayview Avenue, Biloxi, MS 39530 or emailed to: [publiccomments@dmr.ms.gov](mailto:publiccomments@dmr.ms.gov) and delivered by 5:00 PM on March 18, 2019.

Complete description of proposed changes:

TITLE 22 – MISSISSIPPI DEPARTMENT OF MARINE RESOURCES PART 20  
ADMINISTRATIVE PROCEDURES

Chapter 21 Penalties

- 104      Suspension or revocation of licenses or permits, ~~or endorsements~~ may be commenced in addition to seeking administrative penalties.
- ~~105      The Commission may revoke regulatory program requirements, such as but not limited to endorsements, tags, permits, or similar provisions for violations related to that particular program.~~

Mississippi Secretary of State

**ADMINISTRATIVE PROCEDURES NOTICE FILING**

AGENCY NAME Mississippi Department of Marine Resources		CONTACT PERSON Joe Jewell	TELEPHONE NUMBER (228) 523-4072	
ADDRESS 1141 Bayview Ave.		CITY Biloxi	STATE MS	ZIP 39530
EMAIL Joe.jewell@dmr.ms.gov	SUBMIT DATE 2/20/19	Name or number of rule(s): Title 22 Part 20		

Short explanation of rule/amendment/repeal and reason(s) for proposing rule/amendment/repeal: TITLE 22 – MISSISSIPPI DEPARTMENT OF MARINE RESOURCES PART 20 ADMINISTRATIVE PROCEDURES Chapter 21 Penalties, modifications to Section 104 and deletes Section 105.

Specific legal authority authorizing the promulgation of rule: Mississippi Code Ann. § 49-15-15, APA, § 25-43-1.101 et seq.

List all rules repealed, amended, or suspended by the proposed rule: Title 22, Part 20: (see above summary description; complete description attached).

**ORAL PROCEEDING:**

An oral proceeding is scheduled for this rule on Date: \_\_\_\_\_ Time: \_\_\_\_\_ Place: \_\_\_\_\_

Presently, an oral proceeding is not scheduled on this rule.

If an oral proceeding is not scheduled, an oral proceeding must be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) or more persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address, email address, and telephone number of the person(s) making the request; and, if you are an agent or attorney, the name, address, email address, and telephone number of the party or parties you represent. At any time within the twenty-five (25) day public comment period, written submissions including arguments, data, and views on the proposed rule/amendment/repeal may be submitted to the filing agency.

**ECONOMIC IMPACT STATEMENT:**

Economic impact statement not required for this rule.  Concise summary of economic impact statement attached.

TEMPORARY RULES	PROPOSED ACTION ON RULES	FINAL ACTION ON RULES
<input type="checkbox"/> Original filing <input type="checkbox"/> Renewal of effectiveness To be in effect in _____ days Effective date: <input type="checkbox"/> Immediately upon filing <input type="checkbox"/> Other (specify): _____	Action proposed: <input type="checkbox"/> New rule(s) <input checked="" type="checkbox"/> Amendment to existing rule(s) <input type="checkbox"/> Repeal of existing rule(s) <input type="checkbox"/> Adoption by reference Proposed final effective date: <input checked="" type="checkbox"/> 30 days after filing <input type="checkbox"/> Other (specify): _____	Date Proposed Rule Filed: Action taken: <input type="checkbox"/> Adopted with no changes in text <input type="checkbox"/> Adopted with changes <input type="checkbox"/> Adopted by reference <input type="checkbox"/> Withdrawn <input type="checkbox"/> Repeal adopted as proposed Effective date: <input type="checkbox"/> 30 days after filing <input type="checkbox"/> Other (specify): _____

Printed name and Title of person authorized to file rules: Joe Spraggins Executive Director

Signature of person authorized to file rules:

*Joe Spraggins*

OFFICIAL FILING STAMP	DO NOT WRITE BELOW THIS LINE OFFICIAL FILING STAMP	OFFICIAL FILING STAMP
		
Accepted for filing by	Accepted for filing by #23942 <i>[Signature]</i>	Accepted for filing by

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Complete description of proposed changes:

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TITLE 22 – MISSISSIPPI DEPARTMENT OF MARINE RESOURCES PART 20 ADMINISTRATIVE PROCEDURES

Chapter 21 Penalties

- 104 Suspension or revocation of licenses or permits, ~~or endorsements~~ may be commenced in addition to seeking administrative penalties.
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## TITLE 22 – MISSISSIPPI DEPARTMENT OF MARINE RESOURCES

### PART 20 ADMINISTRATIVE PENALTY PROCEDURES

#### Chapter 01 General Provisions

- 100 Part 20 provides the procedures for conducting administrative hearings for violations of rules, regulations and statutes within the purview of the Commission on Marine Resources (CMR) and the Department of Marine Resources (DMR). Mississippi Code Section 49-15-401 (Miss. Leg. 2005, Ch. 422) authorizes the Commission on Marine Resources to “enforce the rules and regulations of the commission and Sections 49-15-1 through 49-15-321, 49-27-1 through 49-27-71, 59-21-111, and such other statutes within the jurisdiction of the Commission on Marine Resources”. The CMR is authorized in Mississippi Code Section 49-15-401, *et seq.*, to impose administrative penalties and to develop procedures to implement the authority granted to the Commission.
- 101 The provisions contained herein apply only to complaints filed on or after the effective date of Part 20.

#### Chapter 02 Definitions

The following definitions apply:

- 100 “Administrative record” means all documents and records timely filed with the CMR/DMR including pleadings, petitions, motions, and legal arguments in support thereof; all documents or records admitted into evidence or administratively noticed by the hearing officer; all official recordings or written transcripts of hearings conducted; and all orders or decisions issued by the hearing officer, executive director, or the CMR regarding the complaint at issue.
- 101 “Citation” means a charge against an individual commenced by a Marine Patrol Officer.
- 102 “Complainant” means the CMR/DMR, acting through any of its employees that have been authorized to investigate, issue, and prosecute a complaint under Part 20.
- 103 “Complaint” means a document issued by the DMR that seeks administrative civil penalties as an alternative to judicial civil penalties or prosecution of criminal offenses. “Complaint” does not include a citation issued by a Marine Patrol Officer charging an individual with misdemeanors or other criminal offenses answerable in justice, county or circuit court
- 104 “Consent Order” means an order entered by the hearing officer/executive director in

accordance with the settlement agreement of the parties.

105 “Days” means calendar days.

106 “Default” means the failure of any party to take the steps necessary and required by these regulations to further the hearing towards resolution, resulting in a finding by the hearing officer adverse to the respondent.

107 “Discovery” refers to the process set forth in Chapter 14 allowing a party to request and obtain information relevant to the complaint proceedings. The scope of discovery is limited by the express terms of that chapter.

108 “Executive Director” refers to the executive director of the Mississippi Department of Marine Resources or his designee.

109 "Hearing Officer" refers to the individual or commissioner selected by the CMR to preside over the hearing on the complaint.

110 “Informal settlement conference” refers to a meeting between the Executive Director and the respondent to discuss the complaint and the Executive Director’s recommendation to the CMR regarding the imposition of an administrative penalty.

111 “Proceeding” means any hearing, determination or other activity before the hearing officer involving the parties to a complaint.

112 “Respondent” means the alleged violator and any person, firm or corporation against whom a complaint has been filed.

113 “Response/Request for Hearing” means a document, responsive to the complaint and signed by the respondent, in which respondent requests a hearing before a hearing officer and admits or denies the allegations of the complaint or asserts affirmative defenses to the action.

### **Chapter 03 Right to Representation**

100 A party may appear in person or through a representative, who is not required to be an attorney at law. The right to representation is at the party’s own expense. Following notification that a party is represented by a person other than him or herself, all further communications regarding the proceedings shall be directed to that representative.

101 A representative of a party shall be deemed to control all matters respecting the interest of such party in the proceeding. Persons who appear as representatives shall not engage in unethical conduct or intentionally fail to observe the procedures set forth in these rules and the proper instructions or orders of the hearing officer.

- 102 A representative may withdraw an appearance by filing a written notice of withdrawal with the hearing officer and by serving a copy on all parties.

#### **Chapter 04 Time Limits; Computation of Time**

- 100 All actions required pursuant to these rules shall be completed within the times specified, unless extended by the hearing officer upon a showing of good cause. Requests for extensions of time for the filing of any pleading, letter, document, or other writing or completing any other required action must be received in advance of the date on which the filing or action is due and should contain sufficient facts to establish a reasonable basis for the relief requested.
- 101 In computing the time within which a right may be exercised, or an act is to be performed, the day of the event from which the designated period runs shall not be included and the last day shall be included. If the last day falls on a Saturday, Sunday, or a state holiday; time shall be extended to the next work day of the DMR.
- 102 Papers delivered to or received by the hearing officer during regular business hours (8 a.m. to 5 p.m.) will be filed on that date. Papers delivered or received at times other than regular business hours will be filed on the next regular business day.

#### **Chapter 05 Service, Notice and Posting**

- 100 Except as otherwise provided in Part 20, the original of every pleading, petition, letter, document, or other writing served in a proceeding under these rules shall be filed with the CMR and the Hearing Officer by submitting them to the Administrative Office of the DMR.
- 101 The complaint and all accompanying information shall be served on the respondent by any method provided by the Mississippi Rules of Civil Procedure. No additional service is required for citation issued by a Marine Patrol Officer.
- 102 Unless otherwise required, service of any documents in the proceedings may be made by personal delivery; by United States first-class or interoffice mail, by overnight delivery, or by fax.
- 103 Service and notice to a party who has appeared through a representative shall be made upon such representative.

#### **Chapter 06 Complaint**

- 100 All complaints and citations for the imposition of administrative penalties shall be reported to and brought before the CMR for final decision.

- 101 All allegations or charges shall be made in writing and signed by the DMR Office Director or Marine Patrol Officer alleging that a violation has occurred that warrants the initiation of administrative penalties.
- 102 The CMR shall not consider complaints filed by third parties. Individuals with allegations or knowledge of violations are encouraged to submit their information to the DMR for evaluation. If the staff of the DMR determines that there is substance to the allegations and evidence to support charging an alleged violator, the DMR shall prepare and sign a complaint.
- 103 Marine Patrol Officers may issue citations that, except for service, shall be processed as complaints seeking administrative penalties. Citations issued by Marine Patrol Officers and filed in Justice of County Court may be voluntarily dismissed prior to the entry of any judicial decision on the underlying facts and, thereafter, refilled and processed as administrative complaints in accordance with the provisions of Chapter 06 Section 104 below.
- 104 Following the submission of a complaint, the Executive Director of the DMR shall within thirty (30) days review the complaint and, except for citations issued by Marine Patrol Officers initially seeking administrative penalties, cause the complaint to be served on the respondent.
- 105 The Executive Director shall cause a copy of the complaint and any supporting documents to be served on the respondent by any means allowed by the Mississippi Rules of Civil Procedure and shall direct the respondent to respond to the allegations within 30 days of the receipt of the complaint.
- 106 Following receipt of the response or thirty (30) days after service of the complaint or citation, the Executive Director shall evaluate the complaint or citation for the purpose of making a recommendation to the CMR.
- 107 If the Executive Director determines that the complaint lacks merit, the Executive Director may recommend to the CMR that the complaint be dismissed. If the Executive Director determines that the complaint has merit, the Executive Director may recommend a fine not to exceed Ten Thousand Dollars (\$10,000.00) for each violation committed by the respondent.
- 108 The Executive Director's recommendation shall be sent to the CMR and to the respondent.
- 109 The respondent shall have 15 days from receipt of the Executive Director's recommendation within which to request an "informal settlement conference" with the Executive Director.
- 110 Upon receipt of a request for an informal settlement conference the Executive Director

shall schedule a meeting with the respondent to discuss the complaint and the Executive Director's recommendation.

- 111 If the Executive Director and the respondent agree to a possible resolution of the complaint, the Executive Director's recommendation to the CMR may be amended.

### **Chapter 07 Request for Hearing**

- 100 The respondent may request a hearing before the CMR. A request for a hearing before the CMR shall be submitted within twenty (20) days of the respondent's receipt of the Executive Director's initial recommendation to the CMR.
- 101 The CMR shall consider the complaint and the Executive Director's recommendation at a regular monthly meeting of the CMR.
- 102 Within forty (40) days of receipt of a request from a respondent for a hearing before the CMR, the CMR shall schedule a hearing on the complaint.
- 103 Notice of the hearing shall be sent by the Executive Director to the respondent by certified mail at least fifteen (15) days prior to the date of the scheduled hearing.
- 104 The CMR may grant continuances of scheduled hearings.
- 105 The CMR may set the hearing before one or more members of the commission or designate a representative of the Attorney General's Office (AGO) to preside over the hearing and render a finding and recommendation to the full commission. If the CMR appoints one or more commissioners or a representative from the AGO to serve as a hearing officer, they may grant continuances of scheduled hearings.
- 106 A duly qualified court reporter shall record the hearing and shall make a full and complete transcript of the proceedings.
- 107 The hearing shall be closed to the public unless the respondent requests that the hearing be open to the public.

### **Chapter 08 Motions**

- 100 Any motion or request for action by the hearing officer relating to any proceeding pending before him or her filed by any party, except those made orally on the record at the hearing, shall be in writing and shall be directed to the hearing officer, with written notice and proof of service to all parties. The caption of each motion shall contain the title and docket number of the proceeding and a clear and plain statement of the relief sought, together with the grounds therefore.

- 101 The hearing officer shall set the time and place for the hearing of the motion. The hearing shall occur as soon as practicable.
- 102 The hearing officer may decide a motion filed pursuant to this section without oral argument.
- 103 The hearing officer shall issue a written order deciding any motion, unless the motion is made during the course of the hearing on the merits while on the record. The hearing officer may request that the prevailing party prepare a proposed order.

### **Chapter 09 Form of Pleadings**

- 100 Except as otherwise expressly provided in Part 20 or by the hearing officer, there are no specific requirements as to the form of documents filed in a proceeding under these rules.
- 101 The original of any pleading, letter, document, or other writing (other than an exhibit) shall be signed by the filing party or its representative. The signature constitutes a representation by the signer that it has read the document, that to the best of its knowledge, information and belief, the statements made therein are true, and that it has not filed the document for the purpose of delay.
- 102 Any written legal argument or statement submitted to the hearing officer by a participant in an action under this part shall be double spaced and typed in a font size 12 point or larger.

### **Chapter 10 Hearing Officers**

- 100 In any matter subject to hearing pursuant to these rules, the hearing officer shall have the authority to do any act and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these rules, including, but not limited to, authority to hold pre-hearing conferences; conduct hearings to determine all issues of fact and law presented; to rule upon motions, requests and offers of proof, dispose of procedural requests, and issue all necessary orders; to issue subpoenas and subpoenas *duces tecum* for the attendance of a person and production of testimony, books, documents, or other things; to compel the attendance of a person residing anywhere in the state; to rule on objections, privileges, defenses, and the receipt of relevant and material evidence; to call and examine a party or witness and introduce into the hearing record documentary or other evidence; to request a party at any time to state the respective position or supporting theory concerning any fact or issues in the proceeding; to certify official acts; to extend the submittal date of any proceeding; to hear and determine all issues of fact and law presented and to issue such interlocutory and final orders, findings, and decisions as may be necessary for the full adjudication of the matter.

## Chapter 11 Issuance of and Response to Complaints

- 100 A complaint may be issued for violations of any rule, regulation, permit, variance, or orders of the CMR/DMR.
- 101 A complaint shall include:
- 101.01 The names of each respondent alleged to have committed a violation(s) covered under this Part 20;
  - 101.02 A statement of the facts, in ordinary and concise language, that specifically identifies the statutes and/or rules alleged to have been violated and the acts or omissions of the respondents that constitutes the alleged violation(s). The statement shall be specific enough to afford the named respondents notice and information in which to prepare a defense;
  - 101.03 Reference to these procedures, notice that a copy of the procedures is available from the DMR;
  - 101.04 Inform the respondent of the consequences of failing to respond by the applicable deadline.
- 102 Excluding citations issued by Marine Patrol Officers, a complaint shall be commenced by filing it with the secretary for the CMR and service on the named respondent(s) by either personal or other form of service consistent with Rule 4 of the Mississippi Rules of Civil Procedure.
- 103 Within thirty (30) days after service of the complaint, the respondent or its representative may file a response to the complaint with the CMR.
- 104 The respondent may:
- 104.01 Object to the complaint on the ground that it does not state acts or omissions upon which the agency may proceed;
  - 104.02 Object to the form of the complaint on the ground that it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense;
  - 104.03 Admit or deny the complaint, in whole or in part, specifying each allegation of fact or conclusion of law as to liability which is in dispute; or
  - 104.04 Present new matters by way of affirmative defenses.

- 105 Each uncontested allegation in the complaint shall be deemed admitted by the respondent.
- 106 If the respondent fails to respond to the complaint in the time periods provided in this section, the matter shall be considered a default, and the respondent shall be considered to have waived his or her right to appear and contest the complaint.
- 107 The issues for hearing shall be limited to those raised in the complaint and the response. If the complaint alleges a repeat violation and the validity of the earlier violations(s) was not contested because of the respondent's failure to file a response/request for hearing, the validity of the earlier violations(s) shall not be at issue.

### **Chapter 12 Pre-hearing Procedures**

- 100 The CMR shall appoint a representative from the Attorney General's Office to serve as the hearing officer.
- 101 The hearing officer shall grant such delays or continuances as may be necessary or desirable in the interest of fairly resolving the case.
- 102 The hearing officer may, on his or her own motion or upon request of any party accompanied by a showing of good cause, continue a hearing to another time or place.
- 103 A party shall apply to the hearing officer for a continuance not less than five days prior to the scheduled hearing.
- 104 All hearings shall be conducted at the offices of the Department of Marine Resources, 1141 Bayview Avenue, Biloxi, MS 39530, or such other location selected by the hearing officer.

### **Chapter 13 Settlement Agreements and Consent Orders**

- 100 At any time before a final decision of the hearing officer, the complainant and the respondent may settle an action, in whole or in part.
- 101 The parties shall memorialize any agreement in writing.
- 102 The hearing officer assigned to hear the merits of the case, shall thereafter enter a proposed agreed order in accordance with the terms of the settlement agreement. Proposed agreed orders are subject to approval of the CMR.

### **Chapter 14 Discovery**

- 100 The provisions of this section provide the exclusive right to, and method of, discovery as to any proceeding governed by these hearing procedures. However, nothing in this section prohibits the parties from voluntarily stipulating to provide discovery deemed appropriate. This section does not authorize the inspection or copying of, any writing, or thing which is privileged from disclosure by law or protected as part of an attorney's work product.
- 101 Unless otherwise stipulated to by the parties, a party may request:
- 101.01 The names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing; and
- 101.02 The opportunity to inspect and make a copy of anything, document, statement or other writings relevant to the issues for hearing that are in the possession, custody or control of the other party and would be admissible in evidence.
- 102 Information subject to disclosure includes the following information from inspection or investigative reports prepared by, or on behalf of, any party that pertain to the subject matter of the proceeding:
- 102.01 names and addresses of witnesses or of persons (other than confidential informants) having personal knowledge of the issues involved in the proceeding;
- 102.02 matters perceived by the investigator in the course of his or her investigation (as opposed to his or her analysis or conclusions), and
- 102.03 statements related to the issues of the proceedings which are otherwise admissible. For purposes of this section, "anything, document, statement or other writings relevant to the issues for hearing that are in the possession, custody, or control of the other party" would include those items within the possession, custody, or control of a third-party who obtained or used such items while acting as a representative, contractor, or agent of the "other party."
- 103 The hearing officer shall set the time for the exchanging of the names and addresses of witnesses and the inspecting and copying of relevant things, documents, statements, and other writings identified in section 101.02 above. Unless other arrangements are made, the party requesting the writings shall pay for the copying.
- 104 All requests under 101 above are continuing, and the party receiving the request shall be under a continuing duty to provide the requesting party with the information requested.

- 105 Absent a stipulation between the parties, a party claiming that certain writings or things are privileged against disclosure shall, within five (5) days of receipt of the request for inspection and copying, serve on the requesting party a written statement setting forth what matters it claims are privileged and the reasons supporting its claims.
- 106 Any party claiming that its request for discovery pursuant to this section has not been complied with or that the opposing party has failed to comply with a stipulated agreement to provide discovery may serve and file with the hearing officer a motion to compel the party who has refused or failed to produce the requested or stipulated discovery to comply. The motion shall include the following:
- 106.01 Facts showing the party has failed or refused to comply with a discovery request or stipulation;
  - 106.02 A description of the information sought to be discovered;
  - 106.03 The reasons why the requested information is discoverable;
  - 106.04 Evidence that a reasonable and good faith attempt to contact the non-complying party for an informal resolution of the issue has been made; and
  - 106.05 To the extent known by the moving party, the measures for the non-complying party's refusal to provide the requested information.
- 107 The motion shall be filed within five (5) days after the date the requested information was to be made available for inspection and copying or the date of notification of the refusal to comply with the discovery request.
- 108 The hearing on the motion to compel discovery shall be held within ten (10) days after the motion is filed, or a later time that the hearing officer may on his or her own motion for good cause determine. The party who has refused or failed to provide discovery shall have the right to serve and file a written answer or other response which shall be due at the hearing office and personally served on all parties at least three (3) days prior to the date set for hearing.
- 109 Unless otherwise stipulated by the parties, the hearing officer shall no later than five (5) days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover. The hearing officer shall serve a copy of the order by mail upon the parties.
- 110 If after receipt of an order directing compliance with the provisions of these rules regarding discovery, a party fails, without good cause, to comply with the order, the hearing officer may draw adverse inferences against that party and may prevent that party from introducing any evidence that had been requested and not produced during discovery into the administrative record.

- 111 Subpoenas and subpoenas *duces tecum* may be issued for attendance at a hearing and for production of documents at any reasonable time and place or at a hearing.
- 112 At the request of a party, subpoenas and subpoenas *duces tecum* shall be issued by hearing officer acting for the CMR.
- 113 The custodian of documents that are the subject of a subpoena *duces tecum* may satisfy the subpoena by delivery of the documents or a copy of the documents, or by making the documents available for inspection or copying.
- 114 The process extends to all parts of the state and shall be served by the sheriff in the county where they are to be executed
- 115 Upon timely motion of a party or witness, or upon his or her own motion, after notice to the parties and an opportunity to be heard and upon a showing of good cause, the hearing officer may order the quashing of a subpoena or subpoena *duces tecum* entirely, may modify it, or may direct compliance with it upon other terms or conditions. In addition, the hearing officer may make any other order as may be appropriate to protect a party or witness from unreasonable or oppressive demands.
- 116 In the case of the production of a party to the record of a proceeding or of a person for whose benefit a proceeding is prosecuted or defended, the service of a subpoena on the witness is not required if written notice requesting the witness to attend, with the time and place of the hearing, is served on the representative of the party or person.
- 117 A witness other than an employee of the state or a political subdivision thereof appearing pursuant to a subpoena or a subpoena *duces tecum*, other than a party, shall receive the same mileage, and appearance fees allowed by law; such fees are to be paid by the party at whose request the witness is subpoenaed.

## **Chapter 15 Contempt and Sanctions**

- 100 If any person in proceedings before the hearing officer or CMR disobeys or resists any lawful order or refuses to respond to a subpoena, subpoena *duces tecum*, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct during a hearing or in its immediate vicinity as to obstruct the proceedings, the hearing officer may or CMR may invoke the assistance of any court of general jurisdiction to order the person or entity to comply with the subpoena and directions of the hearing officer or CMR.

## **Chapter 16 Hearings**

- 100 If after service of a Notice of Hearing a party fails to appear at a hearing either in

person or by representative, the hearing officer may issue a default.

- 101 The hearing shall be presided over by a hearing officer who shall conduct a fair and impartial hearing in which each party has a reasonable opportunity to be heard and to present evidence.
- 102 The hearing shall be conducted in the English language.
- 103 Subject to reasonable limitations that may be imposed by the hearing officer, each party to the proceeding shall have the right to:
- 103.01 Call and examine witnesses;
  - 103.02 Introduce exhibits;
  - 103.03 Question opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examinations;
  - 103.04 Impeach any witness regardless of which party first called the witness to testify; and
  - 103.05 Call and examine an opposing party as if under cross-examination, even if that party does not testify on his or her own behalf.
- 104 The complainant shall have the initial burden of presenting evidence in support of issuance of the complaint, the requested penalty, and any other material that is pertinent to the issues to be determined by the hearing officer.
- 105 At the conclusion of complainant's case-in-chief, the respondent has the burden of presenting any defense to the allegations set forth in the complaint and any response or evidence with respect to the appropriate relief. The respondent has the right to examine, respond to, or rebut the allegations of the complaint and any proffered evidence and material. The respondent may offer any documents, testimony, or other exculpatory evidence which bears on appropriate issues, or may be relevant to the penalty amount.
- 106 At the close of respondent's presentation of evidence, the parties respectively have the right to introduce rebuttal evidence that is necessary to resolve disputed issues of material fact, subject to any limits imposed by the hearing officer.
- 107 The hearing officer may:
- 107.01 Limit the number of witnesses and the scope and extent of any direct examination, cross-examination, or rebuttal testimony, as necessary, to protect the interests of justice and conduct a reasonably expeditious hearing;

- 107.02        Require the authentication of any written exhibit or statement;
- 107.03        Call and examine a party or witness and may, on his or her own motion, admit any relevant and material evidence;
- 107.04        Exclude persons whose conduct impedes the orderly conduct of the hearing; or
- 107.05        Take other action to promote due process or the orderly conduct of the hearing.
- 108        The taking of evidence in a hearing shall be controlled by the hearing officer in the manner best suited to ascertain the facts and safeguard the rights of the parties.
- 109        Each matter in controversy shall be decided by the hearing officer upon a preponderance of the evidence.
- 110        Hearings shall be recorded electronically and shall be the official recording of the hearing.
- 111        A verbatim transcript of the official recording will not normally be prepared but may be ordered by the hearing officer if deemed necessary to permit a full and fair review and resolution of the case. If not so ordered by the hearing officer, a party may, at its own expense, request that a verbatim transcript be made. The party making the request shall provide one copy to the hearing officer and one copy to every other party.
- 112        The official recording of the hearing and transcript of the recording, together with all written submissions made by the parties, shall become part of the administrative record for the proceeding.
- 113        Testimony shall be taken only under oath or affirmation.
- 114        The hearing need not be conducted according to technical rules relating to evidence and witnesses. The hearing officer shall admit evidence which is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions, and which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but upon timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
- 115        In reaching a decision, official notice may be taken, either before or after submission of the proceeding for decision, of any generally accepted technical or scientific matter within the CMR/DMR's area of expertise.

116 Upon motion of a party, the hearing officer may exclude from the hearing room any witnesses not at the time under examination; but the parties or their representatives to the proceeding shall not be excluded.

### **Chapter 17 Decisions of the Hearing Officer**

100 Upon motion, the hearing officer may find a party to be in default upon failure to file a timely response to the complaint; to appear at a scheduled conference or hearing; or to comply with an order of the hearing officer.

101 For purposes of a pending complaint action, a default by respondent shall constitute an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing of the allegations.

102 A default by complainant shall constitute a waiver of complainant's right to proceed on the merits of the action and shall result in the dismissal of the complaint with prejudice.

103 No finding of default shall be made against the respondent unless the complainant presents sufficient evidence to establish prima facie showing that the CMR//DMR had jurisdiction over the matters at issue and that the complaint was properly served.

104 Any proceeding may be reinstated by the hearing officer upon a showing of good cause that contains sufficient facts to show or establish a reasonable basis for the failure to appear at the hearing. The request for reinstatement shall be made by the defaulting party within ten (10) days of service of the default order.

105 Within a reasonable period of time after the hearing, the hearing officer shall make findings upon all facts relevant to the issues for hearing. The hearing officer shall include a recommendation to the CMR on the final disposition of the complaint and a recommendation on the fine to be imposed.

106 The order or decision shall be in writing, signed and dated by the hearing officer deciding the proceeding.

### **Chapter 18 Penalty Assessment Criteria**

100 In determining penalties, the hearing officer and CMR shall consider all relevant circumstances, including, but not limited to:

100.01 The extent of harm caused by the violation;

100.02 The nature and persistence of the violation;

100.03 The length of time over which the violation occurs;

- 100.04 The frequency of past violations; and
- 100.05 The cooperation of the respondent during the course of the investigation and any action taken by the defendant, including the nature, extent, and time of response of any action taken to mitigate the violation

### **Chapter 19 Decision of the CMR**

- 100 At a regular monthly meeting of the CMR occurring more than fourteen (14) days after the submission of the findings and recommendation of the hearing officer, the CMR shall make a final determination of the alleged violation.
- 101 The CMR may adopt the recommendation of the hearing officer or make such further disposition as it deems appropriate.
- 102 If the CMR accepts the recommendation of the hearing officer the findings of facts and conclusions of law submitted by the hearing officer shall be adopted as the findings of the CMR.

### **Chapter 20 Final Order or Decision; Judicial Review**

- 100 A respondent adversely affected by a final decision of the CMR may file an appeal with the Chancery Court of Harrison County, Second Judicial District.
- 101 No petitions for reconsideration under Part 15 are available from CMR decisions following hearings before a hearing officer.
- 102 The appeal shall be filed within thirty (30) days after notification of the decision of the Commission is served or mailed to the party seeking judicial review.
- 103 The appeal shall be perfected by upon filing notice of the appeal and by the prepayment of all estimated costs, including the cost of preparation of the record of the proceedings before the commission, and the filing of a bond in the sum of Five Hundred Dollars (\$500.00), conditioned that if the action of the commission is affirmed by the chancery court, the appealing party shall pay the costs of the appeal to the chancery court.
- 104 The scope of the review by the chancery court shall be limited to a review of the record made before the commission to determine if the action of the commission is unlawful for the reason that it was:
  - 104.01 Not supported by substantial evidence;
  - 104.02 Arbitrary or capricious; or

104.03 In violation of some statutory or constitutional right of the individual.

### **Chapter 21 Penalties**

- 100 Any violation of the rules and regulations of the CMR or violations of Mississippi Code Sections 49-15-1 through 49-15-321, 49-27-1 through 49-27-71, 59-21-111, or other statutes within the jurisdiction of the CMR may result in the imposition of administrative penalties not to exceed Ten Thousand Dollars (\$10,000.00) for each violation.
- 101 Violations of rules and regulations of the CMR may also constitute a misdemeanor punishable by fine and or imprisonment in the county jail as provided for in Mississippi Code Section 49-15-63 (1) (a).
- 102 The CMR/DMR is prohibited from pursuing a violator for administrative penalties and a misdemeanor conviction for the same offense. If a respondent has committed multiple offenses the CMR/DMR may pursue separate violations in different forums.
- 103 Forfeiture of nets, equipment and paraphernalia used in committing a violation may be commenced in addition to seeking administrative penalties.
- 104 Suspension or revocation of licenses or permits may be commenced in addition to seeking administrative penalties.

### **Chapter 22 Chapters and Subchapters Declared Separable**

- 100 Each chapter and subchapter of Title 22 Part 20 shall be declared separable, and if any chapter or subchapter or part thereof shall be held invalid or unconstitutional, the balance of said Title 22 Part 20 shall remain in full force and effect.

**TITLE 22 – MISSISSIPPI DEPARTMENT OF MARINE RESOURCES**

**PART 20 ADMINISTRATIVE PENALTY PROCEDURES**, shall be in effect and be in force from and after the \_\_\_\_\_ day of \_\_\_\_\_.

Adopted this the \_\_\_\_\_ day of \_\_\_\_\_.

**MISSISSIPPI COMMISSION ON MARINE RESOURCES**

By:           /s/ O. Steven Bosarge            
O. Steven Bosarge, Chairman

**MISSISSIPPI DEPARTMENT OF MARINE RESOURCES**

By:           /s/ Joe Spraggins            
Joe Spraggins, Executive Director

## TITLE 22 – MISSISSIPPI DEPARTMENT OF MARINE RESOURCES

### PART 20 ADMINISTRATIVE PENALTY PROCEDURES

#### Chapter 01 General Provisions

- 100 Part 20 provides the procedures for conducting administrative hearings for violations of rules, regulations and statutes within the purview of the Commission on Marine Resources (CMR) and the Department of Marine Resources (DMR). Mississippi Code Section 49-15-401 (Miss. Leg. 2005, Ch. 422) authorizes the Commission on Marine Resources to “enforce the rules and regulations of the commission and Sections 49-15-1 through 49-15-321, 49-27-1 through 49-27-71, 59-21-111, and such other statutes within the jurisdiction of the Commission on Marine Resources”. The CMR is authorized in Mississippi Code Section 49-15-401, *et seq.*, to impose administrative penalties and to develop procedures to implement the authority granted to the Commission.
- 101 The provisions contained herein apply only to complaints filed on or after the effective date of Part 20.

#### Chapter 02 Definitions

The following definitions apply:

- 102 “Administrative record” means all documents and records timely filed with the CMR/DMR including pleadings, petitions, motions, and legal arguments in support thereof; all documents or records admitted into evidence or administratively noticed by the hearing officer; all official recordings or written transcripts of hearings conducted; and all orders or decisions issued by the hearing officer, executive director, or the CMR regarding the complaint at issue.
- 103 “Citation” means a charge against an individual commenced by a Marine Patrol Officer.
- 102 “Complainant” means the CMR/DMR, acting through any of its employees that have been authorized to investigate, issue, and prosecute a complaint under Part 20.
- 103 “Complaint” means a document issued by the DMR that seeks administrative civil penalties as an alternative to judicial civil penalties or prosecution of criminal offenses. “Complaint” does not include a citation issued by a Marine Patrol Officer charging an individual with misdemeanors or other criminal offenses answerable in justice, county or circuit court
- 104 “Consent Order” means an order entered by the hearing officer/executive director in

accordance with the settlement agreement of the parties.

- 105 “Days” means calendar days.
- 106 “Default” means the failure of any party to take the steps necessary and required by these regulations to further the hearing towards resolution, resulting in a finding by the hearing officer adverse to the respondent.
- 107 “Discovery” refers to the process set forth in Chapter 14 allowing a party to request and obtain information relevant to the complaint proceedings. The scope of discovery is limited by the express terms of that chapter.
- 108 “Executive Director” refers to the executive director of the Mississippi Department of Marine Resources or his designee.
- 109 "Hearing Officer" refers to the individual or commissioner selected by the CMR to preside over the hearing on the complaint.
- 110 “Informal settlement conference” refers to a meeting between the Executive Director and the respondent to discuss the complaint and the Executive Director’s recommendation to the CMR regarding the imposition of an administrative penalty.
- 111 “Proceeding” means any hearing, determination or other activity before the hearing officer involving the parties to a complaint.
- 112 “Respondent” means the alleged violator and any person, firm or corporation against whom a complaint has been filed.
- 113 “Response/Request for Hearing” means a document, responsive to the complaint and signed by the respondent, in which respondent requests a hearing before a hearing officer and admits or denies the allegations of the complaint or asserts affirmative defenses to the action.

### **Chapter 03 Right to Representation**

- 100 A party may appear in person or through a representative, who is not required to be an attorney at law. The right to representation is at the party’s own expense. Following notification that a party is represented by a person other than him or herself, all further communications regarding the proceedings shall be directed to that representative.
- 101 A representative of a party shall be deemed to control all matters respecting the interest of such party in the proceeding. Persons who appear as representatives shall not engage in unethical conduct or intentionally fail to observe the procedures set forth in these rules and the proper instructions or orders of the hearing officer.

- 102 A representative may withdraw an appearance by filing a written notice of withdrawal with the hearing officer and by serving a copy on all parties.

#### **Chapter 04 Time Limits; Computation of Time**

- 100 All actions required pursuant to these rules shall be completed within the times specified, unless extended by the hearing officer upon a showing of good cause. Requests for extensions of time for the filing of any pleading, letter, document, or other writing or completing any other required action must be received in advance of the date on which the filing or action is due and should contain sufficient facts to establish a reasonable basis for the relief requested.
- 101 In computing the time within which a right may be exercised, or an act is to be performed, the day of the event from which the designated period runs shall not be included and the last day shall be included. If the last day falls on a Saturday, Sunday, or a state holiday; time shall be extended to the next work day of the DMR.
- 102 Papers delivered to or received by the hearing officer during regular business hours (8 a.m. to 5 p.m.) will be filed on that date. Papers delivered or received at times other than regular business hours will be filed on the next regular business day.

#### **Chapter 05 Service, Notice and Posting**

- 100 Except as otherwise provided in Part 20, the original of every pleading, petition, letter, document, or other writing served in a proceeding under these rules shall be filed with the CMR and the Hearing Officer by submitting them to the Administrative Office of the DMR.
- 101 The complaint and all accompanying information shall be served on the respondent by any method provided by the Mississippi Rules of Civil Procedure. No additional service is required for citation issued by a Marine Patrol Officer.
- 102 Unless otherwise required, service of any documents in the proceedings may be made by personal delivery; by United States first-class or interoffice mail, by overnight delivery, or by fax.
- 103 Service and notice to a party who has appeared through a representative shall be made upon such representative.

#### **Chapter 06 Complaint**

- 100 All complaints and citations for the imposition of administrative penalties shall be reported to and brought before the CMR for final decision.

- 101 All allegations or charges shall be made in writing and signed by the DMR Office Director or Marine Patrol Officer alleging that a violation has occurred that warrants the initiation of administrative penalties.
- 102 The CMR shall not consider complaints filed by third parties. Individuals with allegations or knowledge of violations are encouraged to submit their information to the DMR for evaluation. If the staff of the DMR determines that there is substance to the allegations and evidence to support charging an alleged violator, the DMR shall prepare and sign a complaint.
- 103 Marine Patrol Officers may issue citations that, except for service, shall be processed as complaints seeking administrative penalties. Citations issued by Marine Patrol Officers and filed in Justice of County Court may be voluntarily dismissed prior to the entry of any judicial decision on the underlying facts and, thereafter, refilled and processed as administrative complaints in accordance with the provisions of Chapter 06 Section 104 below.
- 104 Following the submission of a complaint, the Executive Director of the DMR shall within thirty (30) days review the complaint and, except for citations issued by Marine Patrol Officers initially seeking administrative penalties, cause the complaint to be served on the respondent.
- 105 The Executive Director shall cause a copy of the complaint and any supporting documents to be served on the respondent by any means allowed by the Mississippi Rules of Civil Procedure and shall direct the respondent to respond to the allegations within 30 days of the receipt of the complaint.
- 106 Following receipt of the response or thirty (30) days after service of the complaint or citation, the Executive Director shall evaluate the complaint or citation for the purpose of making a recommendation to the CMR.
- 107 If the Executive Director determines that the complaint lacks merit, the Executive Director may recommend to the CMR that the complaint be dismissed. If the Executive Director determines that the complaint has merit, the Executive Director may recommend a fine not to exceed Ten Thousand Dollars (\$10,000.00) for each violation committed by the respondent.
- 108 The Executive Director's recommendation shall be sent to the CMR and to the respondent.
- 109 The respondent shall have 15 days from receipt of the Executive Director's recommendation within which to request an "informal settlement conference" with the Executive Director.
- 110 Upon receipt of a request for an informal settlement conference the Executive Director

shall schedule a meeting with the respondent to discuss the complaint and the Executive Director's recommendation.

- 111 If the Executive Director and the respondent agree to a possible resolution of the complaint, the Executive Director's recommendation to the CMR may be amended.

### **Chapter 07 Request for Hearing**

- 100 The respondent may request a hearing before the CMR. A request for a hearing before the CMR shall be submitted within twenty (20) days of the respondent's receipt of the Executive Director's initial recommendation to the CMR.
- 101 The CMR shall consider the complaint and the Executive Director's recommendation at a regular monthly meeting of the CMR.
- 102 Within forty (40) days of receipt of a request from a respondent for a hearing before the CMR, the CMR shall schedule a hearing on the complaint.
- 103 Notice of the hearing shall be sent by the Executive Director to the respondent by certified mail at least fifteen (15) days prior to the date of the scheduled hearing.
- 104 The CMR may grant continuances of scheduled hearings.
- 105 The CMR may set the hearing before one or more members of the commission or designate a representative of the Attorney General's Office (AGO) to preside over the hearing and render a finding and recommendation to the full commission. If the CMR appoints one or more commissioners or a representative from the AGO to serve as a hearing officer, they may grant continuances of scheduled hearings.
- 106 A duly qualified court reporter shall record the hearing and shall make a full and complete transcript of the proceedings.
- 107 The hearing shall be closed to the public unless the respondent requests that the hearing be open to the public.

### **Chapter 08 Motions**

- 100 Any motion or request for action by the hearing officer relating to any proceeding pending before him or her filed by any party, except those made orally on the record at the hearing, shall be in writing and shall be directed to the hearing officer, with written notice and proof of service to all parties. The caption of each motion shall contain the title and docket number of the proceeding and a clear and plain statement of the relief sought, together with the grounds therefore.

- 101 The hearing officer shall set the time and place for the hearing of the motion. The hearing shall occur as soon as practicable.
- 102 The hearing officer may decide a motion filed pursuant to this section without oral argument.
- 103 The hearing officer shall issue a written order deciding any motion, unless the motion is made during the course of the hearing on the merits while on the record. The hearing officer may request that the prevailing party prepare a proposed order.

### **Chapter 09 Form of Pleadings**

- 100 Except as otherwise expressly provided in Part 20 or by the hearing officer, there are no specific requirements as to the form of documents filed in a proceeding under these rules.
- 101 The original of any pleading, letter, document, or other writing (other than an exhibit) shall be signed by the filing party or its representative. The signature constitutes a representation by the signer that it has read the document, that to the best of its knowledge, information and belief, the statements made therein are true, and that it has not filed the document for the purpose of delay.
- 102 Any written legal argument or statement submitted to the hearing officer by a participant in an action under this part shall be double spaced and typed in a font size 12 point or larger.

### **Chapter 10 Hearing Officers**

- 100 In any matter subject to hearing pursuant to these rules, the hearing officer shall have the authority to do any act and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these rules, including, but not limited to, authority to hold pre-hearing conferences; conduct hearings to determine all issues of fact and law presented; to rule upon motions, requests and offers of proof, dispose of procedural requests, and issue all necessary orders; to issue subpoenas and subpoenas *duces tecum* for the attendance of a person and production of testimony, books, documents, or other things; to compel the attendance of a person residing anywhere in the state; to rule on objections, privileges, defenses, and the receipt of relevant and material evidence; to call and examine a party or witness and introduce into the hearing record documentary or other evidence; to request a party at any time to state the respective position or supporting theory concerning any fact or issues in the proceeding; to certify official acts; to extend the submittal date of any proceeding; to hear and determine all issues of fact and law presented and to issue such interlocutory and final orders, findings, and decisions as may be necessary for the full adjudication of the matter.

## **Chapter 11 Issuance of and Response to Complaints**

- 100 A complaint may be issued for violations of any rule, regulation, permit, variance, or orders of the CMR/DMR.
- 101 A complaint shall include:
- 101.01 The names of each respondent alleged to have committed a violation(s) covered under this Part 20;
  - 101.02 A statement of the facts, in ordinary and concise language, that specifically identifies the statutes and/or rules alleged to have been violated and the acts or omissions of the respondents that constitutes the alleged violation(s). The statement shall be specific enough to afford the named respondents notice and information in which to prepare a defense;
  - 101.03 Reference to these procedures, notice that a copy of the procedures is available from the DMR;
  - 101.04 Inform the respondent of the consequences of failing to respond by the applicable deadline.
- 102 Excluding citations issued by Marine Patrol Officers, a complaint shall be commenced by filing it with the secretary for the CMR and service on the named respondent(s) by either personal or other form of service consistent with Rule 4 of the Mississippi Rules of Civil Procedure.
- 103 Within thirty (30) days after service of the complaint, the respondent or its representative may file a response to the complaint with the CMR.
- 104 The respondent may:
- 104.01 Object to the complaint on the ground that it does not state acts or omissions upon which the agency may proceed;
  - 104.02 Object to the form of the complaint on the ground that it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense;
  - 104.03 Admit or deny the complaint, in whole or in part, specifying each allegation of fact or conclusion of law as to liability which is in dispute; or
  - 104.04 Present new matters by way of affirmative defenses.

- 105 Each uncontested allegation in the complaint shall be deemed admitted by the respondent.
- 106 If the respondent fails to respond to the complaint in the time periods provided in this section, the matter shall be considered a default, and the respondent shall be considered to have waived his or her right to appear and contest the complaint.
- 107 The issues for hearing shall be limited to those raised in the complaint and the response. If the complaint alleges a repeat violation and the validity of the earlier violations(s) was not contested because of the respondent's failure to file a response/request for hearing, the validity of the earlier violations(s) shall not be at issue.

### **Chapter 12 Pre-hearing Procedures**

- 100 The CMR shall appoint a representative from the Attorney General's Office to serve as the hearing officer.
- 101 The hearing officer shall grant such delays or continuances as may be necessary or desirable in the interest of fairly resolving the case.
- 102 The hearing officer may, on his or her own motion or upon request of any party accompanied by a showing of good cause, continue a hearing to another time or place.
- 103 A party shall apply to the hearing officer for a continuance not less than five days prior to the scheduled hearing.
- 104 All hearings shall be conducted at the offices of the Department of Marine Resources, 1141 Bayview Avenue, Biloxi, MS 39530, or such other location selected by the hearing officer.

### **Chapter 13 Settlement Agreements and Consent Orders**

- 100 At any time before a final decision of the hearing officer, the complainant and the respondent may settle an action, in whole or in part.
- 101 The parties shall memorialize any agreement in writing.
- 102 The hearing officer assigned to hear the merits of the case, shall thereafter enter a proposed agreed order in accordance with the terms of the settlement agreement. Proposed agreed orders are subject to approval of the CMR.

### **Chapter 14 Discovery**

- 100 The provisions of this section provide the exclusive right to, and method of, discovery as to any proceeding governed by these hearing procedures. However, nothing in this section prohibits the parties from voluntarily stipulating to provide discovery deemed appropriate. This section does not authorize the inspection or copying of, any writing, or thing which is privileged from disclosure by law or protected as part of an attorney's work product.
- 101 Unless otherwise stipulated to by the parties, a party may request:
- 101.01 The names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing; and
- 101.02 The opportunity to inspect and make a copy of anything, document, statement or other writings relevant to the issues for hearing that are in the possession, custody or control of the other party and would be admissible in evidence.
- 102 Information subject to disclosure includes the following information from inspection or investigative reports prepared by, or on behalf of, any party that pertain to the subject matter of the proceeding:
- 102.01 names and addresses of witnesses or of persons (other than confidential informants) having personal knowledge of the issues involved in the proceeding;
- 102.02 matters perceived by the investigator in the course of his or her investigation (as opposed to his or her analysis or conclusions), and
- 102.03 statements related to the issues of the proceedings which are otherwise admissible. For purposes of this section, "anything, document, statement or other writings relevant to the issues for hearing that are in the possession, custody, or control of the other party" would include those items within the possession, custody, or control of a third-party who obtained or used such items while acting as a representative, contractor, or agent of the "other party."
- 103 The hearing officer shall set the time for the exchanging of the names and addresses of witnesses and the inspecting and copying of relevant things, documents, statements, and other writings identified in section 101.02 above. Unless other arrangements are made, the party requesting the writings shall pay for the copying.
- 104 All requests under 101 above are continuing, and the party receiving the request shall be under a continuing duty to provide the requesting party with the information requested.

- 105 Absent a stipulation between the parties, a party claiming that certain writings or things are privileged against disclosure shall, within five (5) days of receipt of the request for inspection and copying, serve on the requesting party a written statement setting forth what matters it claims are privileged and the reasons supporting its claims.
- 106 Any party claiming that its request for discovery pursuant to this section has not been complied with or that the opposing party has failed to comply with a stipulated agreement to provide discovery may serve and file with the hearing officer a motion to compel the party who has refused or failed to produce the requested or stipulated discovery to comply. The motion shall include the following:
- 106.01 Facts showing the party has failed or refused to comply with a discovery request or stipulation;
  - 106.02 A description of the information sought to be discovered;
  - 106.03 The reasons why the requested information is discoverable;
  - 106.04 Evidence that a reasonable and good faith attempt to contact the non-complying party for an informal resolution of the issue has been made; and
  - 106.05 To the extent known by the moving party, the measures for the non-complying party's refusal to provide the requested information.
- 107 The motion shall be filed within five (5) days after the date the requested information was to be made available for inspection and copying or the date of notification of the refusal to comply with the discovery request.
- 108 The hearing on the motion to compel discovery shall be held within ten (10) days after the motion is filed, or a later time that the hearing officer may on his or her own motion for good cause determine. The party who has refused or failed to provide discovery shall have the right to serve and file a written answer or other response which shall be due at the hearing office and personally served on all parties at least three (3) days prior to the date set for hearing.
- 109 Unless otherwise stipulated by the parties, the hearing officer shall no later than five (5) days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover. The hearing officer shall serve a copy of the order by mail upon the parties.
- 110 If after receipt of an order directing compliance with the provisions of these rules regarding discovery, a party fails, without good cause, to comply with the order, the hearing officer may draw adverse inferences against that party and may prevent that party from introducing any evidence that had been requested and not produced during discovery into the administrative record.

- 111 Subpoenas and subpoenas *duces tecum* may be issued for attendance at a hearing and for production of documents at any reasonable time and place or at a hearing.
- 112 At the request of a party, subpoenas and subpoenas *duces tecum* shall be issued by hearing officer acting for the CMR.
- 113 The custodian of documents that are the subject of a subpoena *duces tecum* may satisfy the subpoena by delivery of the documents or a copy of the documents, or by making the documents available for inspection or copying.
- 114 The process extends to all parts of the state and shall be served by the sheriff in the county where they are to be executed
- 115 Upon timely motion of a party or witness, or upon his or her own motion, after notice to the parties and an opportunity to be heard and upon a showing of good cause, the hearing officer may order the quashing of a subpoena or subpoena *duces tecum* entirely, may modify it, or may direct compliance with it upon other terms or conditions. In addition, the hearing officer may make any other order as may be appropriate to protect a party or witness from unreasonable or oppressive demands.
- 116 In the case of the production of a party to the record of a proceeding or of a person for whose benefit a proceeding is prosecuted or defended, the service of a subpoena on the witness is not required if written notice requesting the witness to attend, with the time and place of the hearing, is served on the representative of the party or person.
- 117 A witness other than an employee of the state or a political subdivision thereof appearing pursuant to a subpoena or a subpoena *duces tecum*, other than a party, shall receive the same mileage, and appearance fees allowed by law; such fees are to be paid by the party at whose request the witness is subpoenaed.

## **Chapter 15 Contempt and Sanctions**

- 100 If any person in proceedings before the hearing officer or CMR disobeys or resists any lawful order or refuses to respond to a subpoena, subpoena *duces tecum*, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct during a hearing or in its immediate vicinity as to obstruct the proceedings, the hearing officer may or CMR may invoke the assistance of any court of general jurisdiction to order the person or entity to comply with the subpoena and directions of the hearing officer or CMR.

## **Chapter 16 Hearings**

- 100 If after service of a Notice of Hearing a party fails to appear at a hearing either in

person or by representative, the hearing officer may issue a default.

- 101 The hearing shall be presided over by a hearing officer who shall conduct a fair and impartial hearing in which each party has a reasonable opportunity to be heard and to present evidence.
- 102 The hearing shall be conducted in the English language.
- 103 Subject to reasonable limitations that may be imposed by the hearing officer, each party to the proceeding shall have the right to:
- 103.01 Call and examine witnesses;
  - 103.02 Introduce exhibits;
  - 103.03 Question opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examinations;
  - 103.04 Impeach any witness regardless of which party first called the witness to testify; and
  - 103.05 Call and examine an opposing party as if under cross-examination, even if that party does not testify on his or her own behalf.
- 104 The complainant shall have the initial burden of presenting evidence in support of issuance of the complaint, the requested penalty, and any other material that is pertinent to the issues to be determined by the hearing officer.
- 105 At the conclusion of complainant's case-in-chief, the respondent has the burden of presenting any defense to the allegations set forth in the complaint and any response or evidence with respect to the appropriate relief. The respondent has the right to examine, respond to, or rebut the allegations of the complaint and any proffered evidence and material. The respondent may offer any documents, testimony, or other exculpatory evidence which bears on appropriate issues, or may be relevant to the penalty amount.
- 106 At the close of respondent's presentation of evidence, the parties respectively have the right to introduce rebuttal evidence that is necessary to resolve disputed issues of material fact, subject to any limits imposed by the hearing officer.
- 107 The hearing officer may:
- 107.01 Limit the number of witnesses and the scope and extent of any direct examination, cross-examination, or rebuttal testimony, as necessary, to protect the interests of justice and conduct a reasonably expeditious hearing;

- 107.02        Require the authentication of any written exhibit or statement;
- 107.03        Call and examine a party or witness and may, on his or her own motion, admit any relevant and material evidence;
- 107.04        Exclude persons whose conduct impedes the orderly conduct of the hearing; or
- 107.05        Take other action to promote due process or the orderly conduct of the hearing.
- 108        The taking of evidence in a hearing shall be controlled by the hearing officer in the manner best suited to ascertain the facts and safeguard the rights of the parties.
- 109        Each matter in controversy shall be decided by the hearing officer upon a preponderance of the evidence.
- 110        Hearings shall be recorded electronically and shall be the official recording of the hearing.
- 111        A verbatim transcript of the official recording will not normally be prepared but may be ordered by the hearing officer if deemed necessary to permit a full and fair review and resolution of the case. If not so ordered by the hearing officer, a party may, at its own expense, request that a verbatim transcript be made. The party making the request shall provide one copy to the hearing officer and one copy to every other party.
- 112        The official recording of the hearing and transcript of the recording, together with all written submissions made by the parties, shall become part of the administrative record for the proceeding.
- 113        Testimony shall be taken only under oath or affirmation.
- 114        The hearing need not be conducted according to technical rules relating to evidence and witnesses. The hearing officer shall admit evidence which is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions, and which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but upon timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
- 115        In reaching a decision, official notice may be taken, either before or after submission of the proceeding for decision, of any generally accepted technical or scientific matter within the CMR/DMR's area of expertise.

116 Upon motion of a party, the hearing officer may exclude from the hearing room any witnesses not at the time under examination; but the parties or their representatives to the proceeding shall not be excluded.

### **Chapter 17 Decisions of the Hearing Officer**

100 Upon motion, the hearing officer may find a party to be in default upon failure to file a timely response to the complaint; to appear at a scheduled conference or hearing; or to comply with an order of the hearing officer.

101 For purposes of a pending complaint action, a default by respondent shall constitute an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing of the allegations.

102 A default by complainant shall constitute a waiver of complainant's right to proceed on the merits of the action and shall result in the dismissal of the complaint with prejudice.

103 No finding of default shall be made against the respondent unless the complainant presents sufficient evidence to establish prima facie showing that the CMR//DMR had jurisdiction over the matters at issue and that the complaint was properly served.

104 Any proceeding may be reinstated by the hearing officer upon a showing of good cause that contains sufficient facts to show or establish a reasonable basis for the failure to appear at the hearing. The request for reinstatement shall be made by the defaulting party within ten (10) days of service of the default order.

105 Within a reasonable period of time after the hearing, the hearing officer shall make findings upon all facts relevant to the issues for hearing. The hearing officer shall include a recommendation to the CMR on the final disposition of the complaint and a recommendation on the fine to be imposed.

106 The order or decision shall be in writing, signed and dated by the hearing officer deciding the proceeding.

### **Chapter 18 Penalty Assessment Criteria**

100 In determining penalties, the hearing officer and CMR shall consider all relevant circumstances, including, but not limited to:

100.03 The extent of harm caused by the violation;

100.04 The nature and persistence of the violation;

100.03 The length of time over which the violation occurs;

- 100.04 The frequency of past violations; and
- 100.06 The cooperation of the respondent during the course of the investigation and any action taken by the defendant, including the nature, extent, and time of response of any action taken to mitigate the violation

### **Chapter 19 Decision of the CMR**

- 100 At a regular monthly meeting of the CMR occurring more than fourteen (14) days after the submission of the findings and recommendation of the hearing officer, the CMR shall make a final determination of the alleged violation.
- 101 The CMR may adopt the recommendation of the hearing officer or make such further disposition as it deems appropriate.
- 102 If the CMR accepts the recommendation of the hearing officer the findings of facts and conclusions of law submitted by the hearing officer shall be adopted as the findings of the CMR.

### **Chapter 20 Final Order or Decision; Judicial Review**

- 100 A respondent adversely affected by a final decision of the CMR may file an appeal with the Chancery Court of Harrison County, Second Judicial District.
- 101 No petitions for reconsideration under Part 15 are available from CMR decisions following hearings before a hearing officer.
- 102 The appeal shall be filed within thirty (30) days after notification of the decision of the Commission is served or mailed to the party seeking judicial review.
- 103 The appeal shall be perfected by upon filing notice of the appeal and by the prepayment of all estimated costs, including the cost of preparation of the record of the proceedings before the commission, and the filing of a bond in the sum of Five Hundred Dollars (\$500.00), conditioned that if the action of the commission is affirmed by the chancery court, the appealing party shall pay the costs of the appeal to the chancery court.
- 104 The scope of the review by the chancery court shall be limited to a review of the record made before the commission to determine if the action of the commission is unlawful for the reason that it was:
  - 104.01 Not supported by substantial evidence;
  - 104.02 Arbitrary or capricious; or

104.03 In violation of some statutory or constitutional right of the individual.

### **Chapter 21 Penalties**

- 100 Any violation of the rules and regulations of the CMR or violations of Mississippi Code Sections 49-15-1 through 49-15-321, 49-27-1 through 49-27-71, 59-21-111, or other statutes within the jurisdiction of the CMR may result in the imposition of administrative penalties not to exceed Ten Thousand Dollars (\$10,000.00) for each violation.
- 101 Violations of rules and regulations of the CMR may also constitute a misdemeanor punishable by fine and or imprisonment in the county jail as provided for in Mississippi Code Section 49-15-63 (1) (a).
- 102 The CMR/DMR is prohibited from pursuing a violator for administrative penalties and a misdemeanor conviction for the same offense. If a respondent has committed multiple offenses the CMR/DMR may pursue separate violations in different forums.
- 103 Forfeiture of nets, equipment and paraphernalia used in committing a violation may be commenced in addition to seeking administrative penalties.
- 104 Suspension or revocation of licenses or permits, ~~or endorsements~~ may be commenced in addition to seeking administrative penalties.
- ~~105 The Commission may revoke regulatory program requirements, such as, but not limited to endorsements, tags, permits, or similar provisions for violations related to that particular program.~~

### **Chapter 22 Chapters and Subchapters Declared Separable**

- 100 Each chapter and subchapter of Title 22 Part 20 shall be declared separable, and if any chapter or subchapter or part thereof shall be held invalid or unconstitutional, the balance of said Title 22 Part 20 shall remain in full force and effect.

