

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____



Michael Preston
SECRETARY OF COMMERCE

Alan McClain
COMMISSIONER,
ARKANSAS INSURANCE
DEPARTMENT

October 5, 2023

Honorable John Thurston
Arkansas Secretary of State
State Capitol Building
Little Rock, AR 72201
Attn. Arkansas Register

sent via email: register@sos.arkansas.gov

Re: Proposed New Rule 125 "RULE OF PRACTICES AND PROCEDURES"

Dear Secretary:

The Arkansas Insurance Department has scheduled a public hearing as to Proposed New Rule 125 "RULE OF PRACTICES AND PROCEDURES." Enclosed are the DOI Notices of Public Hearing and a copy of the proposed rule.

Please arrange to publish the information in a format acceptable to the Secretary for at least 30 days in advance. Can you send us confirmation that we can use in the transcript as a public hearing exhibit?

An electronic filing will be made within the statutorily required 7 days. Thanks for your help.

Sincerely,

Clara Mezza
Administrative Analyst /Legal Division
clara.mezza@arkansas.gov
501-683-3497

Enclosures

PROPOSED RULE 125
ARKANSAS INSURANCE DEPARTMENT
RULE OF PRACTICES AND PROCEDURES

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I. AUTHORITY

This Rule is issued pursuant to Ark. Code Ann. § 25-15-203(a) which requires state agencies to adopt a rule of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of forms and instructions used by the agency. In addition, Ark. Code Ann. § 25-15-203(a) requires state agencies to issue a rule describing its organization, method of operations and public access to information it provides. This Rule is also issued under the authority of Ark. Code Ann. § 23-61-108(a)(1) which permits the Arkansas Insurance Commissioner (“Commissioner”) to issue rules necessary for or as an aid to the effectuation of any provision of the Arkansas Insurance Code (“AIC”).

II. APPLICATION OF INSURANCE CODE & RULES

Unless more specifically addressed in this Rule, the AIC or other Arkansas Insurance Department ("AID") administrative rules ("AIDR") that pertain to a specific administrative action or procedure shall apply to the administrative activity at the AID. In the event of a conflict between a provision in this Rule with the AIC, AIDR, or the Arkansas Administrative Procedures Act ("APA") (Ark. Code Ann. §§ 25-15-201 et seq.), then the provisions in the latter statutory or rule-based requirements shall apply.

III. ADMINISTRATIVE ADJUDICATIVE PROCEEDINGS

A. An administrative adjudication proceeding ("adjudicative proceeding") at AID shall be a proceeding qualifying as an adjudication under Ark. Code Ann. § 25-15-202(1)(A). Unless specifically exempted under this Rule, adjudicative proceedings at AID include but are not limited to any proceedings initiated by AID against licensees for violations of the AIC or AIDR resulting or culminating in an administrative order.

1. Exemption For Financially Related Transactions Or Reviews. Financially related reviews by AID or administrative actions undertaken by AID pertaining to the financial solvency, ownership, condition, or affairs of an insurer or business organization licensee that may ultimately result in an administrative order shall be exempt from the provisions of this Rule; instead, the specific, pertinent provisions of the AIC or AIDR pertaining to the activity under review shall apply to provide the procedures, forms, or practices related to the financial activities. This exemption applies, by example and without limitation, to mergers and acquisitions,

holding company transactions, financial examinations and adoption orders of such reports, risk-based capital requirements, changes of ownership, hazardous condition situations, rehabilitations, receiverships, liquidations, material business modifications, and any other matter pertaining to the financial affairs of an insurer or licensed business organization. AID maintains that there already exist adequate and unique statutory or rule-based requirements supplying the AID practices or procedures required for such activities in Chapters 62, 63 and 69 of the AIC.

2. Notices of Public Hearing(s). An adjudicative proceeding by AID shall begin from its issuance of a written Notice of Public Hearing ("NOPH") mailed to a licensee that sets out the date, time and location of an administrative hearing and provides sufficient facts and notice of allegations of violations of AIC or AIDR, allegedly committed by the licensee. The content of the NOPH shall otherwise comply with Ark. Code Ann. § 25-15-208 and shall be mailed by certified mail, return receipt requested to the licensee at its last reported address at AID. AID advises licensees to maintain a current and accurate working address with AID to receive notices from AID; otherwise, AID shall consider that adequate notice was provided to the licensee of the NOPH at the licensee's last known address as reported to AID. A licensee subject to a NOPH shall be identified as a Respondent.

a. Timing of Hearing. No hearing shall be conducted in less than ten (10) days from the Respondent's receipt of the NOPH unless there exists a public emergency as set out in Section III(A)(12) of this Rule. Although it is not

statutorily required to provide the following time frame, AID, generally, sets non-emergency hearings to occur within thirty (30) to forty-five (45) days of the anticipated receipt of the NOPH by the Respondent. In the absence of statutory language explicitly referencing the time periods to be calculated upon working days, the timing of the hearing shall be provided upon a calendar day basis.

i. Following receipt of the NOPH by Respondent, Respondent and AID may mutually agree to a rescheduled hearing date.

b. Replies or Responses to a NOPH. A Respondent may, but is not required to, respond to a NOPH, either orally or in writing. AID however strongly encourages licensees receiving a NOPH to respond in writing to AID's NOPH in order to provide an adequate record for acknowledgment that Respondent was notified of an administrative hearing and, in addition, such oral or written response may provide for a consideration by AID as to the nature of any plausible or meritorious defenses to the allegations raised against the Respondent by a complainant. Any such response to the NOPH should be submitted to AID within fifteen (15) working days of the Respondent's receipt of the NOPH. Formal rules of pleading are not required in any written reply to a NOPH. A written reply may be made in general narrative form, or it may admit or deny the averments or paragraphs in the NOPH. A Respondent shall not be prejudiced by failing to respond to a NOPH.

c. Hearing Officer. In the NOPH, AID shall identify the hearing officer to preside over the adjudicative proceeding who may be the Arkansas

Insurance Commissioner ("Commissioner") or other duly appointed person. Within fifteen (15) days of receipt of the NOPH, a Respondent may request the appointment of a substitute hearing officer in the event of conflict, bias, appearance of impropriety, or upon any other basis of disqualification that is sufficiently described and justified. In the event of conflict, AID may designate a hearing officer not employed by AID or by the Arkansas Department of Commerce ("ADOC") to act as hearing officer under Ark. Code Ann. § 23-61-303(a)(3). In the event of a scheduling conflict with the originally designated hearing officer, the Commissioner may appoint a substitute hearing officer, and AID shall promptly notify Respondent in writing of this change.

3. Continuances. In the event of a conflict or hardship with the date and time of the administrative hearing as set out in the NOPH, a Respondent may request a rescheduled date and time for the administrative hearing within fifteen (15) days of receipt of the NOPH. The request under this Section shall be made to, reviewed and decided by the hearing officer designated in this matter. The conflict needs to detail a legitimate hardship upon the Respondent to attend the initially scheduled hearing and shall not be granted in the event that the Respondent has demonstrated a pattern or history of requesting multiple continuances.

4. Pre-hearing Evidence Notices, Discovery and Access to AID Information. If the Respondent chooses to request the items listed in Ark. Code Ann. § 25-15-208(a)(3), then, upon such a request, AID shall provide the information to the Respondent no later than ten (10) days from the date of the scheduled hearing. AID and

Respondent may however mutually agree as to a different timing for submission of the items under Ark. Code Ann. § 25-15-208(a)(3). In the absence of statutory language explicitly referencing the time periods to be calculated upon working days, the information shall be supplied, upon request, on the basis of calendar days.

a. Access to AID File(s). Upon request and after issuance of a NOPH, Respondent may access or copy the file and records constituting the basis of the adjudicative proceeding against the Respondent as detailed in the NOPH under the same time periods required by a state agency to respond to an Arkansas Freedom of Information Act ("FOIA") request; however, AID and Respondent may mutually agree to an extended time period. The information provided however shall not disclose any information related to other AID files under active and open investigation or examination under Ark. Code Ann. §§ 23-61-107, 23-61-207, nor to any other records exempt from disclosure under FOIA. A decision by AID denying the records either in full or in part due to the above FOIA exemptions shall detail in writing the nature of exemption relied upon. The Respondent may challenge any such denials by petitioning the appointed hearing officer for the information under a protective order, or other appropriate limitations (assuming it is legally feasible to disclose such information in a limited fashion) if the Respondent shows an imperative need for such information that is critical to its defense to a NOPH.

b. Pre-Hearing Discovery. The provisions of Ark. Code Ann. §§ 23-61-301 and 23-61-302 shall apply to a Respondent's pre-hearing discovery rights

under an adjudicative proceeding. The Commissioner's issuance of subpoenas for witnesses or the production of documents from persons, business organizations, or other entities under this Rule shall be ministerial in nature. A party's request for a subpoena shall not be denied unless the requested subpoena: (1) seeks information or testimony from persons or organizations that is substantially irrelevant, or not substantially probative, of any issue raised in the NOPH; or (2) reasonably appears to be intended to harass or overly burden the person or organization with excessive information requests that are substantially not relevant to the proceeding at issue. There is not a form required for use for a request for a Commissioner's subpoena other than the request must be a request that details and identifies the individuals needed to testify in an administrative proceeding or sufficiently describes the documents to be produced. Requests for a subpoena from the Commissioner shall be made to the investigator assigned to review the complaint. Depositions of witnesses are permitted with an appropriately described subpoena detailing the date, time and location of the deposition for such person's testimony, with any described production of documents. AID and Respondent may however mutually agree as to the date, time and location of the deposition. Although AID is not required to abide by other pre-hearing discovery provisions or actions as permitted under the Arkansas Rules of Civil Procedure, the parties to an adjudicative proceeding may however mutually agree to other forms of pre-hearing discovery if it is permitted by the appointed hearing officer.

5. Conduct of Administrative Hearing. The conduct of any hearing for an adjudicative proceeding under this Rule shall follow the provisions of Ark. Code Ann. §§ 23-61-301 to 23-61-306 and any of the requirements described under the Arkansas Administrative Procedures Act in Ark. Code Ann. § 25-15-208. The Arkansas Rules of Evidence do not apply to the admission or rejection of evidence submitted in the proceeding; however, the hearing officer may loosely apply such standards in the proceeding. The hearing officer may admit or deny oral or documentary evidence on the basis of whether the information is relevant to the allegations or defenses raised or alleged.

a. The Commissioner, or his or her appointed hearing officer, may temporarily close an administrative hearing from the public subject to Ark. Code Ann. § 23-61-305(a).

b. The appointed hearing officer may sequester witnesses for good cause upon request of any party in the adjudicative proceeding.

c. The appointed hearing officer has full power to maintain order, decorum and organization of the proceeding, to make rulings on the admission or rejection of evidence, to require adherence to his or her rulings as to all parties, witnesses, or to the public in attendance, as well as other powers described in Ark. Code Ann. § 25-15-213(3)(A). These powers include:

(i) To issue subpoenas if the agency is authorized by law to issue them;

(ii) To administer oaths and affirmations;

(iii) To maintain order;

(iv) To rule upon all questions arising during the course of a hearing or proceeding;

(v) To permit discovery by deposition or otherwise;

(vi) To hold conferences for the settlement or simplification of issues;

(vii) To make or recommend decisions; and

(viii) Generally, to regulate and guide the course of the pending proceeding.

d. The appointed hearing officer may issue preliminary rulings and orders during the course of an administrative proceeding, governing the administration of the proceeding, prior to a final order, without such orders requiring ratification or approval by the Commissioner under Section III (9) of this Rule.

6. Interventions. Following issuance of the NOPH, interested persons may file a petition, motion or request to intervene in writing to the Commissioner, under Ark. Code Ann. § 23-61-305(c) setting forth its qualifications for intervention. An Intervenor's financial or economic interests must be directly or immediately impacted by a Commissioner's order on the issue(s) raised in the NOPH to qualify as Intervenor. The Commissioner, or appointed hearing officer, may grant or deny a request for intervention by written order with or without a separate administrative hearing.

Intervenors granted participation in the proceeding shall be identified as Intervenors and shall be accorded the same rights as a party in the administrative proceeding. There is no AID required form or format for a petition, motion or request to intervene in a proceeding, other than, in general, it should be in writing and set out its qualifications in satisfying the above standards in this Section.

7. Style Heading & Font Requirements. The style headings or format for documents, replies, motions, written requests or responses related to an administrative proceeding subject to this Section should follow the heading or format of the initial NOPH stating the subject matter described, the name of the licensee, which shall be identified as Respondent, and the AID tracking number. AID will not reject any document failing to conform to these technical style requirements, however AID strongly encourages Respondents with attorneys to comply with this requirement. In addition, AID encourages Respondents when filing written documents in a proceeding with AID to use a 12 (twelve) point typeface, double-spaced on eight and ½ by eleven (11) inch paper.

8. Time Limit for Orders Following Hearing. The time limit upon AID for the issuance of an order, following an adjudicative hearing, shall follow the requirement in Ark. Code Ann. § 23-61-306(b) that states an order must be entered within thirty (30) days from the termination of the hearing or any rehearing thereon. The Commissioner or hearing officer may keep the adjudicative hearing record open to receive items requested by the hearing officer after a hearing, and, therefore, the hearing

shall be considered terminated when the record actually closes for purposes of the thirty (30) day period under this Section. Pursuant to Ark. Code Ann. § 23-61-306 and Ark. Code Ann. § 25-15-210, the Commissioner shall mail a copy of the order to the same persons given notice of the hearing and to all parties of the hearing with the content of the order complying with Section III (A)(11) of this Rule. A party may agree in advance to accept receipt or delivery of the order by electronic means. In the absence of statutory language explicitly referencing the time periods to be calculated upon working days, the order shall be issued on the basis of calendar days.

9. Review and Ratification of Hearing Officer Findings and Recommendations. For adjudicative proceedings or hearings in which the Commissioner does not preside over the matter as a hearing officer, the Commissioner shall review the record and recommendations of the appointed hearing officer and may accept or reject such recommendations, or make modifications thereof, and such actions shall be reflected in writing in a final order.

10. Request for Rehearing. The Respondent in an adjudicative proceeding or hearing may request a rehearing with the Commissioner under Ark. Code Ann. § 23-61-305(f) within thirty (30) days after Respondent's receipt of the order by Respondent. The Commissioner in his or her discretion may grant a rehearing or re-argument of the matters involved. The Commissioner's discretion to grant a rehearing or re-argument is guided by whether the order lacked substantial evidence under Ark. Code Ann. § 23-61-307(g)(2) or violated the standards under Ark. Code Ann. § 25-15-

212(h). AID does not require a specific form or format of a rehearing petition, rehearing motion or request for a rehearing other than it should be a written request describing such errors meeting the above described and cited statutory standards. In the absence of statutory language explicitly referencing the time periods to be calculated upon working days, the request for a rehearing shall be made on the basis of calendar days.

11. Content of the Order. The content of an adjudicative order subject to this Section shall comply with Ark Code Ann. § 23-61-306(c) and (d) as well as Ark. Code Ann. § 25-15-210. AID does not require a specific form or format of a final order, other than, in general, it should meet the above cited statutory standards.

12. Emergency Suspension Orders on a Public Emergency Basis. Following the issuance of an AID issued emergency order on the basis of a public, health, safety and welfare emergency, pursuant to Ark. Code Ann. § 23-64-216(e), a hearing shall be promptly instituted. A hearing shall be considered promptly instituted under Ark. Code Ann. § 23-64-216(e) if the hearing is held within ten (10) days of receipt by the Respondent of the NOPH or emergency order issued, whichever is the earliest received by the Respondent. By mutual agreement, AID and Respondent may agree to a different time and date of the hearing. In the absence of statutory language explicitly referencing the time periods to be calculated upon working days, the hearing shall be set on the basis of calendar days.

13. Petitions For Declaratory Rulings Under Ark. Code Ann. § 23-61-303(b). At his or her discretion, the Insurance Commissioner may interpret or decide an

insurance issue in a written declaratory order issued following the requirements of AID Rule 121 resolving a question or controversy concerning the applicability of statutory provisions, rules or orders over which AID has authority. The time period of such adjudication shall follow the requirements of AID Rule 121 which requires an order within ninety (90) days from the filing of the petition. The discretion of the Commissioner to consider issuing a declaratory order shall include the evaluation of whether: (1) there is an issue of sufficient state-wide magnitude over an ambiguity, interpretation or conflict requiring an interpretation for the public consumers involved or a substantial number of third parties servicing those consumers; and (2) rulemaking procedures would not be timely in alleviating any irreparable harm to insureds or affected third parties needing an interpretation. The Commissioner may in his or her discretion grant or deny a request for a declaratory order with or without a hearing. If granted, the Commissioner may set a request for a declaratory order for an administrative hearing to consider legal argument(s) related to such requested interpretations. AID does not have a specific form or required format for a petition for a declaratory ruling other than it be a request in writing to the Commissioner detailing the standards above.

14. Aggrieved Person Demand for Hearing. The Commissioner shall hold a hearing under Ark. Code Ann. § 23-61-303(b) on written demand for a hearing by any person aggrieved by any act, threatened act, or failure of Commissioner to act or by any report, rule, regulation or order of the Commissioner. A person shall be

considered aggrieved in the event of an order, act or failure to act by the Commissioner if: (1) such action or inaction substantially and directly impacts a person's or business organization's insurance rights or benefits; and (2) AID has substantially demonstrated no intent to investigate or review such claim(s) or complaint. Upon written demand for a hearing made by an aggrieved person, the hearing shall be held within thirty (30) days after receipt by the Commissioner of the demand. In the absence of statutory language explicitly referencing the time periods to be calculated upon working days, a hearing shall be held on the basis of calendar days.

15. Consent Orders. Upon mutual agreement, AID and the Respondent may resolve an administrative adjudication by written stipulation or through a written consent order as approved by the Commissioner. The order shall be equivalent to any final order issued under this Rule. There is no AID required form or format of a consent order other than, in general, it should meet the previously cited statutory standards of the required content in a final order. AID may supply a licensee with a previously issued, or a historically issued consent order form, to facilitate an agreed format for a consent order.

16. Electronic Communications and Filings. Any requirement under this Section of the Rule necessitating a document in writing may be satisfied if such communication is submitted through electronic means, except for Notices Of Public Hearings or final orders which shall be physically mailed. However, a Respondent may agree in writing to accept service of a NOPH or a final order via email.

17. Appeals of AID Orders. A Respondent or Intervenor may appeal a final order issued by the Commissioner as an administrative adjudication order under either Ark. Code Ann. § 23-61-307 or Ark. Code Ann. § 25-15-202.

18. Ex Parte Communications Are Prohibited. For administrative adjudications in which there has been issued a NOPH, no AID personnel involved with an investigation or hearing shall communicate with the appointed hearing officer or Commissioner about the matter outside the presence of the Respondent or Respondent's attorney, and this same limitation applies to communications to the hearing officer or Commissioner by the Respondent, or Respondent's attorney, outside the presence of an AID attorney or investigator assigned to the file. However, AID personnel may disclose to a hearing officer, or Commissioner, status report activities of the file, if it is a required job duty of such person to provide status reports of his or her activities to the hearing officer or Commissioner.

19. Telephonic or Live Video Based Testimony. In the event of a significant hardship upon a witness to attend an administrative adjudicative hearing, and, upon approval by AID, the Respondent and the appointed hearing officer, a witness in a proceeding may testify under oath during an in person hearing via telephone or on a live video basis.

20. Live Video-Based Adjudicative Proceedings. Upon approval of the appointed hearing officer, AID and the Respondent, adjudicative proceedings may be

conducted by live video conferencing. AID shall appropriately arrange for a court reporter to participate and to swear in witnesses and to transcribe testimony.

21. Preferred Filing Requirements. For adjudicative proceedings in which a NOPH has been issued, AID does not, at this time, maintain any formal filing, or system requirements for it to receive and process filings, communications or other documents from parties during the course of an administration proceeding. Therefore, AID strongly advises Respondents represented by an attorney to notify or copy by regular mail, or electronic mail, the director of administrative legal services at AID with any replies to a NOPH, pre-hearing motions, discovery requests, briefs, or other formal and substantially important filings related to the administrative hearing. The Respondent should identify the AID tracking number and style of the matter in order for AID to maintain an accurate, chronological administrative record of such activities for purposes of tracking and appeal. AID should provide the appropriate contact information of the AID Legal Division administrative director in the AID cover letter accompanying a NOPH. Licensees not represented by attorneys are strongly advised to also copy the AID Legal Division administrative director, as identified in the NOPH cover letter, with copies of significant communications related to the administrative proceeding, although it is not a violation of the Rule for failure of any licensee to do so. AID simply requests these practices or procedures be encouraged to help facilitate its regulatory obligation to maintain an accurate and complete chronological record of

activities related to the proceeding in the event that the licensee later appeals a ruling or order of the Commissioner.

22. Administrative Actions Following a Limited Scope Market Conduct Examination. The provisions of Section III of this Rule shall apply to administrative actions undertaken by AID against licensees arising from findings pursuant to a limited scope market conduct report, unless such action pertains to a hearing under Ark. Code Ann. § 23-61-205(a)(3)(C) in which case the procedures under that Section shall apply.

23. Denials of Insurance Producer Licensing or Renewals. Although a denial by the Commissioner or AID related to an insurance producer's application or renewal for a license is not typically formulated into an administrative order, a producer, or person seeking a license as a producer, may request an administrative hearing over the denial. In such event, the administrative actions, practices and procedures after such a request shall follow Section III of this Rule.

24. Denials of Insurer, HMO or Other Business Organization Licensing or Renewals. Other than actions relating to denials of licensing or renewals by AID or the Commissioner pertaining to matters described in Section III(A) (1) of this Rule, the Commissioner or AID may set an administrative hearing for a review of a denial of licensing or renewal of a business organization, upon a request in writing by the organization. In such event, the administrative actions, practices and procedures after such a request shall follow Section III of this Rule.

25. Settlement Conferences. In his or her discretion, the Commissioner, or appointed hearing officer, is authorized to require parties in an adjudicative proceeding under Section III of this Rule to participate in a settlement conference at a date, time or location specified by the Commissioner or hearing officer, unless the parties mutually agree to a different time, date and location. No statements made during the conference, or prepared for purposes of this conference, shall be admissible in any adjudicative hearing. A conference under this Section, if requested, shall be attended by the identified parties, and attorneys if any, and may be required to occur as a condition before an adjudicative hearing is held on the matter. The conference may be held in person, over the phone, or through live video conferencing.

IV. INVESTIGATIONS

A. The requirements under this Section shall govern the practices and procedures of AID in conducting investigations against licensees for insurance matters or violations of the AIC or AIDR. Pursuant to Ark. Code Ann. § 23-61-103(d), the Commissioner may conduct such examinations and investigations of insurance matters, in addition to examinations or investigations expressly authorized, as he or she may deem proper to determine whether any person has violated any provision of the AIC or to secure information useful in the lawful administration of such provision.

1. Statutory Examinations & Limited Scope Examinations. Statutory or limited scope examinations conducted by AID under Ark. Code Ann. §§ 23-61-201 et seq. shall not be subject to the provisions under Section IV of this Rule but shall instead

comply with the procedures, practices or requirements of the statutory subchapter governing such examinations.

2. Exemption For Financially Related Investigations Reviews & for Other AID Division Activities. Financially related investigations or reviews pertaining to matters described in Section III (A)(1) shall not be subject to the provisions of Section IV of this Rule. Please see Section VIII (D) of this Rule for additional exceptions.

3. Complaints. Upon receipt of a complaint from AID, a licensee insurance producer shall respond to AID in writing within thirty (30) days, and a licensee, non-insurance producer shall respond within fifteen (15) working days, unless such time period has been extended by AID upon request. A complaint shall include a copy of the complaint along with a notice cover letter from AID. The AID cover letter shall ask for a written response and may ask for copies of documents or records relevant to the complaint. Time extensions for a response shall be granted if the nature of the complaint is complex, involves multiple claims or files, requires significant research that may reasonably take longer than the allowed working days to complete, or necessitates the production of documents or records that may justify the need for an extension. Additional reasons for time extensions may be granted on a good cause basis.

4. Ongoing Requirement To Respond To AID Inquiries. A licensee shall have an obligation to respond to additional inquiries pertaining to an active complaint under the same timing restriction under Section (IV)(A)(3) from the licensee's

receipt of the inquiry. Time extensions shall be governed under the same standards under Section IV(A)(3).

5. Notice Of Investigative Conference. In the event that a licensee's response to a complaint or inquiry fails to sufficiently respond to the complaint or inquiry, or there is a need for additional information from the licensee by AID to adequately evaluate the complaint or inquiry, a licensee may receive a written Notice of Investigative Conference ("NOIC") from AID. A NOIC shall be a written request from AID for the licensee to attend a recorded conference at AID to discuss matters pertaining to the complaint. The NOIC notice shall set the time, date and location of the conference. A licensee is entitled in the NOIC to be represented by counsel. The NOIC may be transcribed and the licensee's statements shall be taken under oath. A NOIC may additionally request from the licensee that the licensee produce records or files as identified in the NOIC notice at the time of the NOIC. In the event of conflict, hardship, or good cause, AID may reschedule a NOIC, or AID and the licensee may mutually agree as to a different date of the NOIC conference. The NOIC shall consist of AID personnel, the licensee, and counsel for the licensee. The NOIC shall be considered an active, investigatory action that is confidential under Ark. Code Ann. § 23-61-103(d). Upon request, a licensee may obtain a copy of any statements of the licensee obtained during a NOIC within a reasonable time from AID after such statements are transcribed. If permitted by AID, the conference required under the NOIC may take place through live video conferencing.

a. Failure to Attend a NOIC. AID strongly encourages all licensees to attend a requested NOIC. For insurance producers, a failure to attend a NOIC may be grounds for sanctions under Ark. Code Ann. § 23-64-512(a)(16) which involves refusing to be examined or to produce any accounts, records, or files for examination – in addition to Ark. Code Ann. § 23-64-512(a)(17), for failing to cooperate with the Commissioner in an investigation when required by the Commissioner. The above sanctions may be imposed for failure to attend a NOIC regardless of the ultimate outcome of the investigation.

6. Subpoenas from AID & On-Site Inspections with Subpoenas from AID. Licensees are strongly encouraged to voluntarily supply AID with requested records or files during an investigation to avoid being served an AID subpoena. In the event requested files or records are not timely supplied to AID, pursuant to Ark. Code Ann. § 23-61-301(a), the Commissioner may issue subpoenas to examine any individual under oath and may require and compel production of records, books, papers, contracts, and other documents. Subpoenas for records or files, including on-site requests for such information with a subpoena, shall provide reasonable advance notice for compliance with the request(s) in the subpoena unless there is an AID documented, emergency, investigative need and justification for immediate access to such records.

7. Confidentiality of Investigations. Investigations of licensees and documents, statements or records obtained during an investigation, under this Section, shall be confidential while the complaint or file(s) pertaining to the complaint are under

active investigation under Ark. Code Ann. § 23-61-103. Exceptions to the confidentiality requirements shall follow the exemptions and exceptions listed under Ark. Code Ann. § 23-61-103 which include and are not limited to disclosure(s) to state, federal or local law enforcement.

8. Closing a Complaint File or Referral(s) for Enforcement. Within a reasonable time after review by AID of the complaint and investigative records, AID shall advise the licensee, or other party, in writing of whether it has closed or dismissed the complaint, or whether the matter has been transferred to the AID Legal Division for additional review or enforcement.

9. Complaints Referred to the AID Legal Division. The requirements, practices and procedures pertaining to investigations by AID, shall continue to apply after referral of a complaint to the AID Legal Division and after the issuance by AID of a NOPH under Section IV(A)(2) of this rule.

10. Complaint Form(s). For complaints filed at AID against licensees, AID strongly encourages that the complaint be submitted to AID under the form available at <https://insurance.arkansas.gov/consumer-services/consumer-services/file-a-complaint/>. However, AID shall accept a complaint in any format or manner which sufficiently details and answers similar fields as those listed in the complaint form.

11. Electronic Communications and Filings. Any requirement under this Section of the Rule necessitating a document in writing may be satisfied if such

communication is submitted through electronic means. However, AID shall send by mail a complaint or NOIC to a licensee at his or her last reported address.

V. RULEMAKING PROCEEDINGS.

A. The rulemaking procedures of AID shall follow the rulemaking provisions or requirements in Ark. Code Ann. § 23-61-108, Ark. Code Ann. § 25-15-204, and all other legislative requirements in the Arkansas Code necessary to effectuate rulemaking, state legislative review, and approval of rules issued by AID.

1. Requirement of A Public Hearing. Pursuant to Ark. Code Ann. § 23-61-108(a)(3), AID shall hold a public hearing on all of its proposed rules without the limitation provided in Ark Code Ann. § 25-15-204(a)(2)(b) relating to at least twenty-five (25) persons requesting an oral hearing.

2. Persons Requesting Advance Notice or Rulemaking Proceedings. AID shall provide advance notice to persons requesting notice as to rulemaking proceedings under Ark Code Ann. § 25-15-204(a)(1)(C), relating to advance notice to interested persons, or stakeholders, by permitting such persons to receive such notices through an AID email publication system in which such persons may register, located at <https://insurance.arkansas.gov/industry-regulation/legal/>. In addition, AID reasonably strives to separately and independently provide such advance notice to potentially interested persons or affected stakeholders that it may be aware of by estimation of the issue(s) raised by the proposed rule. However, AID strongly encourages interested persons to register for such advance notices in the email blast

system located at the site <https://us11.list-manage.com/subscribe?u=90b015c22a84c9a6c44025d8d&id=36c33fb0a5> in this Section.

4. Proposed Rule Website Publication(s). AID maintains a dedicated website at <https://insurance.arkansas.gov/industry-regulation/legal/proposed-rules/> for proposed rules and activities which may be reviewed by the public or interested persons.

5. Transcripts & Public Comments. AID shall provide on its dedicated website page for proposed rules a transcript of the public hearing with all of the required Arkansas Legislative Council forms, rule drafts and markups, if any, and public comments in response to the rule, within a reasonable time following completion of the transcript by the court reporter.

6. Telephonic Based Public Comments During a Rulemaking Hearing. AID reasonably strives to permit public comments to be submitted by phone into the administrative record during a rulemaking proceeding by providing a call-in number for such purposes sufficiently in advance of a public hearing that intends to receive public comments related to a proposed AID rule.

7. Conduct of a Rulemaking Hearing. The Commissioner or his or her appointed hearing officer shall have full authority to control the admission of any administrative documents, public comments or testimony to be entered into the public record of a rulemaking hearing, and to otherwise maintain order, decorum,

organization of the hearing itself as well as authority to close or keep the public record open for an additionally stated time period.

8. Adoption of Rule Following a Rulemaking Hearing. The Commissioner is not required to formally adopt or approve a proposed rule in writing after a rulemaking hearing but may simply permit the promulgation process to continue onto the next steps of legislative review and approval of the proposed rule. On the other hand, the Commissioner, in his or her discretion, may withdraw a proposed rule following a hearing, or re-notice a proposed rule for re-hearing, due to public comments, or lack of public comments, or in the event there exist defects in the proposed rule related to APA or other legislatively required procedures or filings. AID shall communicate a withdrawal of a rule to the Arkansas Bureau of Legislative Research and Arkansas Legislative Council, and shall notify interested parties of a withdrawal or re-hearing of a rule, in its email distribution system described in Section V(2) of this Rule.

9. Rulemaking Notebook. At the time of a rulemaking hearing, AID creates and maintains a notebook providing a list of contents, any cabinet-level approvals, public notices, copies of the proposed final rule with any markup drafts, any legislative filings of the proposed rule and any public comments received prior to the beginning of the rulemaking proceeding. Persons may request a copy of the proposed rule notebook from AID following the close of the rulemaking hearing.

10. AID Bulletins and Directives. From time to time, AID issues administrative bulletins or directives that provide AID advisories or informal

interpretations of insurance or licensing matters, notices of rulemaking activities, notices as to forms and updates to forms, information related to activities in various regulated markets, or which addresses various other matters. A bulletin or directive is not in and of itself legally binding; however, any laws or rules, as referenced and analyzed in a bulletin or advisory, may form the underlying basis of an alleged violation as explained in the publication. These announcements may be viewed at <https://insurance.arkansas.gov/industry-regulation/legal/>. Interested persons may request that the Commissioner issue a bulletin or directive related to an issue or activity under AID jurisdiction, but it shall be under the discretion of the Commissioner whether to grant or deny such a request.

11. AID Authority to Issue Rule(s) to Implement Legislation. AID shall timely issue rules when expressly mandated to do so by the legislature to implement legislation. However, if the authority granted to the Commissioner under the law to issue rules is permissive or discretionary in nature, the Commissioner is not automatically required to implement such legislation by rule for such laws to apply. In such cases, the law and requirements under the provisions of the law itself shall apply and go into effect upon subject licensees or organizations on the effective date of the law without the need for AID to preliminarily issue a promulgated rule. For laws providing discretionary rule-making powers to the Commissioner to implement enacted legislation under his or her enforcement purview, the Commissioner has discretion to issue or not issue a rule, and such discretion shall be guided by factors

which consider: (1) whether the law itself is already sufficiently clear and comprehensive enough in design, requirements and implementation that there is no substantial need for an implementational rule at this time; (2) whether there is a significant ambiguity, conflict or vagueness issue of a significant magnitude pertaining to the law, or section thereof, as raised from AID complaints or AID enforcement concerns, that necessitates an explanation or interpretation of an issue under a rule; or (3) whether a rule is needed for promulgation to implement needed updates to conform with subsequently enacted legislation, National Association of Insurance Commissioners ("NAIC") models, National Conference of Insurance Legislators ("NCOIL") models, or the need to adjust to modern practices of the affected industry.

12. AID Rules Conforming with NAIC or NCOIL Rule Models or Legislation. AID may promulgate rules, and amendments to such rules from time to time, if a state law or rule is based on a NAIC or NCOIL model. The Commissioner has discretion to promulgate such rules or amendments to model rules and adopt them either in their entirety or on a provision by provision basis. AID reasonably strives to update NAIC or NCOIL model rules once every five (5) years. The provisions or requirements of Section V of this Rule shall apply to the issuance by AID of model rules, or amendments thereof, in the same manner as any other administrative rule.

13. AID Adoption of NAIC Forms, Requirements and Manuals. From time to time, AID may adopt NAIC forms, manuals, guides, filing requirements, changes to such forms or guides, and other NAIC requirements or standards. Depending upon the

magnitude of the change or requirement, AID shall adopt such actions through the issuance of an administrative bulletin.

VI. FORMS

A. The number of forms formally required by AID related to licensing, various transactions and required filings under its jurisdiction is too abundant to list or attach to this Rule. For licensees and interested persons, such forms are available on the AID website located at <https://insurance.arkansas.gov/>.

VII. NOTICE OF AID TO LICENSEES CONCERNING THIS RULE.

A. For licensees subject to Section III and IV of this Rule relating to administrative adjudications or investigations, such licensees shall be advised of the practices and procedures of AID announced in this Rule. AID may provide written notice to the licensee with a link to access the contents of this Rule on the AID website.

VIII. MISCELLANEOUS PRACTICES AND PROCEDURES

A. Attorneys Representing Licensees not Licensed in Arkansas. Attorneys representing licensees in AID administrative actions who are not licensed to practice law in Arkansas, but who are licensed to practice law in another state, may represent a licensee on a *pro hac vice* basis upon the filing of a motion, petition or request for such status with the Commissioner.

B. Foreign Language Interpreters. If given sufficient advance notice, AID may arrange for a foreign language interpreter to assist persons desiring to testify in adjudicative and rulemaking proceedings as described in this Rule.

C. Data or Information Requests to Licensees Relating to Governor Declared Public Emergencies, Disasters or Catastrophes. In order for AID to evaluate the magnitude of losses, patterns or practices related to coverages and claims that affect insurance matters, licensees shall respond to AID requests for information related to state-wide public emergencies, disasters or catastrophes. Such requests shall be considered investigations under Ark. Code Ann. § 23-61-103(d) and Section IV of this Rule. AID may however make an accelerated demand for information or data that requires an earlier response than otherwise permitted under this Rule if there is an imperative and immediate need for the information due to the magnitude of the public emergency or catastrophe.

D. Additional Exceptions. The requirements in Sections III and IV of this Rule pertaining to adjudicative actions and investigations shall not apply to the activities or practices of the Arkansas Public Employee Claims Division, Criminal Investigation Division of AID, the Government Bonding Board, and the Liquidation Division of AID; instead, the specific statute(s) or rule(s) governing the activities or practices of those divisions or boards shall apply.

E. Approval of Marketing or Advertising Publications. Although AID may provide helpful guidance, AID shall not be required to review and approve marketing

programs, advertising, or illustrations that are proposed to be used by licensees unless specifically required to approve such materials under the AIC or AIDR.

F. Informal Legal Opinions & Surveys. Licensees and interested persons may request or engage in discussions or correspondence with AID staff involving interpretations of various AID rules or AIC provisions. However, such opinions or interpretations should not be considered officially binding upon AID or the Commissioner unless or until they are approved in an administrative order. Licensees and interested persons making such inquiries are encouraged to first review the AID laws, rules, bulletins, directives and announcements for such information that are available on the official AID website.

G. Certificates of Compliance. Upon request of an insurer or other licensed organization or individuals, and to assist such licensees with licensure and registration in other states or with federal programs, AID may issue certificates of compliance ("COCs") for licensees. The issuance or denial by AID of a COC shall not be considered an adjudicative proceeding under this Rule and shall be granted or denied based upon whether the licensee is under good standing with AID Accounting, Finance and Legal Divisions. Good standing shall mean that the licensee is current as to all required payment of fees or taxes imposed by AID, the licensee is not delinquent as to required financial and licensure filings, and the licensee has not shown a history within the last five (5) years of violations of the AIC or AIDR as reflected in AID issued orders.

H. Sharing of Confidential Information with State Agencies Jointly Administering Programs with AID. For purposes of Ark. Code Ann. § 23-61-103(d), a state law enforcement agency shall include state agencies jointly administering programs with AID. AID may share with such agencies confidential information gathered through the program if there is a substantial need for such information to be received by the state agency to implement or evaluate a program, and such agencies agree in writing with AID for it to adhere to the same confidentiality restrictions related to disclosures that apply to AID.

IX. STATEMENT OF ORGANIZATION AND OPERATIONS

AID is an agency of state government created under Act No. 148 of 1959 as codified under Ark. Code Ann. § 23-63-101 et seq. Pursuant to Ark. Code Ann. § 23-61-101(c)(2), the primary mission of AID is consumer protection through insurer solvency and market conduct regulation and fraud prosecution and deterrence. Specifically, under the direction and supervision of the Commissioner, pursuant to Ark. Code Ann. § 23-61-103(c), AID regulates: (1) the licensing of insurance companies; (2) the licensing of insurance producers; (3) regulation of premium rates and policy forms; (4) regulation of insurer solvency and receiverships; and (5) any other matters relating to the effective regulation of the business of insurance. The individual in charge of day to day operations is the Commissioner who is appointed by the Governor under Ark. Code Ann. § 23-61-102. From time to time, AID issues administrative orders, rules, bulletins and directives pertaining to the business of insurance or other regulation of business

organizations subject to the jurisdiction of AID. For administrative purposes, AID is comprised of divisions which include but are not limited to licensing, financial regulation, accounting regulation, legal services, general administration, public employee claims, risk management for state owned properties, consumer services or affairs, and liquidation and receiverships. A current organizational chart reflecting the organization and operations of divisions shall be available from the AID website at the following link: <https://www.insurance.arkansas.gov/administration/organization-chart2>.

X. INFORMATION FOR PUBLIC GUIDANCE AND FOIA REQUESTS

AID employs persons holding certain responsibilities for handling FOIA requests, licensing questions and complaints against licensees so that the public may obtain information about the agency or make submissions or requests. FOIA requests may be submitted to: aid.foi@arkansas.gov. Descriptions of AID Divisions and contact information for specific AID Divisions may be found at the following link: <https://www.insurance.arkansas.gov/administration/>. AID has a list of official forms used by the agency and a list of all formal, written statements of policy and written interpretations in bulletins, directives, orders and rules which may be obtained through accessing the links at <https://www.insurance.arkansas.gov/industry-regulation>.

XI. PUBLIC MEETINGS

Neither the Commissioner nor AID is a commission or governing board that holds regular or special meetings. However, AID holds publicly accessible hearings on all administrative and rulemaking matters.

XII. LICENSING

All AID actions regarding licensure are governed by the provisions of Chapter 64 of the AIC (for insurance producers) codified at Ark. Code Ann. § 23-64-101 et seq. and Chapter 63 of the AIC (for insurers) codified at Ark. Code Ann. § 23-63-101 et seq. However, AID regulates and licenses many other business organizations and individuals throughout the AIC or AIDR that are not insurance producers or insurers. Additional licensure regulations and forms are available for review at the following AID website at: <https://www.insurance.arkansas.gov/industry-regulation/legal/finalized-rules/>. AID encourages the public to explore, navigate or browse the main AID website for the acquisition or download of pertinent forms and information related to requirements of licensure of insurance producers, insurers, other individuals, or other business organization regulated by AID which is located at <https://www.insurance.arkansas.gov/>

XIII. WEBSITE LINKS TO AID FORMS & DOCUMENTS

Internet locations to various AID forms, documents or publications, as previously cited in this Rule, may change from time to time. Interested persons should consult the official AID website for the current internet location of the documents or publications or contact AID for assistance in locating a particular document or form.

XIV. EFFECTIVE DATE

This Rule shall be effective upon approval by the Arkansas Legislative Council and shall go into effect ten (10) days after filing a final rule with the Secretary of State. Unless excepted under this Rule, this Rule shall apply to all administrative actions, investigations, rules, orders, complaints and policies that are undertaken, reviewed or issued by the Commissioner or AID after the effective date of this Rule.

<u>ALAN MCCLAIN</u>	<u>DATE</u>
<u>INSURANCE COMMISSIONER</u>	



Hugh McDonald
SECRETARY OF COMMERCE

Alan McClain
COMMISSIONER,
ARKANSAS INSURANCE
DEPARTMENT

DATE: October 4, 2023
TO: ALL LICENSEES
FROM: ARKANSAS INSURANCE DEPARTMENT
SUBJECT: PROPOSED RULE 125: RULE OF PRACTICES AND PROCEDURES

NOTICE OF PUBLIC HEARING

Please find attached or available by electronic publication by the Arkansas Insurance Department ("AID") Proposed Rule 125, "RULE OF PRACTICES & PROCEDURES."

Pursuant to Arkansas Administrative Procedures Act, and other applicable laws or rules, NOTICE is hereby given that a PUBLIC HEARING will be held on December 5, 2023 at 10 A.M., in the Second Floor Hearing Room ("Diamond Mine Room"), at the Arkansas Department of Commerce, 1 Commerce Way, Little Rock, AR 72202.

The purpose of the Public Hearing will be to determine whether the Commissioner should adopt Proposed Rule 125, "RULE OF PRACTICES AND PROCEDURES." The Arkansas Insurance Commissioner is proposing a rule which sets out the administrative practices and procedures of the Arkansas Insurance Department ("AID").

All interested persons are encouraged to make comments, statements, or opinions to the address below or attend the Public Hearing and present, orally or in writing, statements, arguments or opinions on the proposed Rule. All licensees and other interested persons are responsible for notifying all their personnel, agents, and employees about this Public Hearing. The record will remain open for public comment until the close of public hearing, December 5, 2023.

Persons wishing to testify or make comments are requested to submit intended statements in writing in advance. Direct your inquiries to: Booth Rand, General Counsel, Arkansas Insurance Department, 501-371-2820, email: booth.rand@arkansas.gov. A copy of the proposed Rule may be obtained or viewed at <https://www.insurance.arkansas.gov/pages/industry-regulation/legal/proposed-rules/>.

Sincerely,

Booth Rand
General Counsel
Arkansas Insurance Department