



# South Carolina Department of Insurance

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NIKKI R. HALEY  
Governor

RAYMOND G. FARMER  
Director

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STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

BEFORE THE SOUTH CAROLINA  
DEPARTMENT OF INSURANCE

IN THE MATTER OF: )  
)  
Promulgation of Emergency )  
Insurance Regulation 69-77 )  
)

EMERGENCY ORDER NO. 2015-EO-001

This matter comes before the Director of Insurance as a result of the state of emergency created by the tropical moisture and non-tropical weather system resulting in catastrophic rainfall and flooding throughout the state of South Carolina and its aftermath. Being fully informed of the premises, I hereby find as follows:

1. The South Carolina Department of Insurance has the duty pursuant to the provisions of Title 38 the South Carolina Code Annotated to enforce the provisions of the South Carolina Insurance Code. The Department has the authority expressly conferred upon it by, or reasonably implied from, the provisions of §§ 38-3-10 *et seq.*
2. Section 38-3-410 *et seq.*, provides that

If the Governor declares a state of emergency pursuant to Section 1-3-420, the director may issue one or more emergency regulations pursuant to Section 1-23-130(A) applicable to all insurance companies, entities, and persons, as defined in Section 38-1-20, that are subject to Title 38.

Governor Nikki Haley declared a state of emergency effective October 1, 2015 by Executive Order 2015-21 for the entire State of South Carolina as a result of the tropical moisture and non-tropical weather system that had the potential for storms with record-breaking rainfall and massive flooding. *See* Exhibit 1. The emergency conditions which necessitated the issuance of that emergency declaration continue with areas of the state experiencing widespread, catastrophic and devastating flooding and other damage. This catastrophic event has cost lives, destroyed homes, communities, businesses and rendered some parts of the state inaccessible with fallen trees, downed power lines, damage to roadways and bridges, disruptions to water and electrical service. It has produced and continues to

produce dangerous conditions throughout the state that jeopardize public safety and the lives of the citizens of South Carolina.


As a result, Governor Haley requested that the President of the United States, Barack Obama, declare an expedited disaster declaration for the State of South Carolina.

3. In the ordinary course of the business of insurance, insureds are required to take certain action or to make payments or provide information within certain limited periods of time. This severe weather event has caused a disruption in the lives of many South Carolinians making the notification process difficult because of the inability of insureds to receive mail due to the catastrophic flooding, damaged roadways and bridges, and mandatory and/or voluntary evacuations and/or the destruction or damage of their homes and property. Thus, many insureds are currently unable to timely act or respond to such notices or to timely pay insurance premiums and need additional time within which to act or respond. This could result in an insured being without coverage. Emergency Regulation 69-77 provides emergency relief to the insureds of South Carolina in the counties included in the federal disaster declaration. Its terms and conditions are incorporated into this order by reference as if fully set forth verbatim herein. *See Exhibit 2.*
4. This Emergency Order is being issued pursuant to the provisions of §§ 38-3-410 *et seq.*, because this severe weather event and its aftermath demonstrate an immediate threat to the public health, safety and welfare of South Carolinians. In order to avoid the cancellation, nonrenewal or other termination of insurance coverage as a result of an insured's inability to act within specified timeframes, the Department promulgated Regulation 69-77 on October 8, 2015. The provisions of the regulation take into account that insureds residing in the counties listed in the federal disaster declaration may be displaced and need additional time to act or respond to certain insurance requirements.
5. The Emergency Regulation sets forth in detail the emergency procedures and requirements that are being imposed for the protection of South Carolina consumers, the lines of insurance, geographic areas of the state in which they apply, the time at which the applicability commences and the time at which the applicability terminates in accordance with S.C. Code Ann. §38-3-430.
6. Neither this Order nor Emergency Regulation 69-77 are intended to confer any additional property or other rights upon insureds in the counties included in the federal disaster declaration. It is intended to provide additional time for insureds to act or respond to insurance requirements. The issuance of this Emergency Order and Emergency Regulation 69-77 are fair under the circumstances due to the catastrophic events and harm described above.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. All persons licensed by the South Carolina Department of Insurance or otherwise authorized to transact the business of insurance shall take the action necessary to effectuate and comply with the requirements of Emergency Regulation 69-77.
2. The provisions of the emergency order and regulation shall be liberally construed to effectuate the purposes and intent expressed therein and to afford maximum consumer protection.
3. This Order shall take effect immediately.

Entered this 9th day of October, 2015.

  
Raymond G. Farmer

Columbia, South Carolina

***EMERGENCY ORDER NO. 2015-EO-001***

***Exhibit 1: Executive Order 2015-21***

***(SEE THE FOLLOWING TWO PAGES)***

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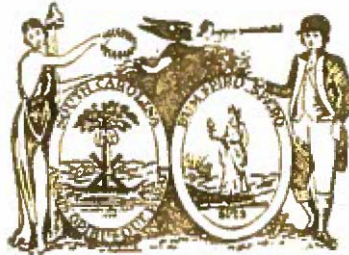
# State of South Carolina

## Executive Department

**FILED**

OCT 01 2015

*Mark Hammond*  
SECRETARY OF STATE



## Office of the Governor

EXECUTIVE ORDER NO.

2015-21

**WHEREAS**, the National Hurricane Center has determined that the State of South Carolina is presently vulnerable to the effects of a strengthening hurricane, known as Hurricane Joaquin still developing over the Atlantic Ocean, as well as a significant low pressure system of heavy rainfall and flash flooding forecast to impact our state; and

**WHEREAS**, I have been advised that the heavy rain and flash flooding represent a threat to the safety, security, welfare, and property of citizens in South Carolina, the preparation and response for which require assistance and support from the State.

**THEREFORE**, by virtue of the power and authority vested in me as Governor, pursuant to the Constitution and Statutes of the State of South Carolina, I hereby declare that a State of Emergency exists in South Carolina and direct that the South Carolina Emergency Operations Plan be placed into effect. I direct that all prudent preparations be taken at the individual, local, and state levels to protect against the possible effects of heavy rain and flash flooding.

**FURTHER**, I hereby place specified units and/or personnel of the South Carolina National Guard on State Active Duty pursuant to my authority under Section 25-1-1840 of the South Carolina Code of Laws, and I will do so by directing the Adjutant General to issue supplemental orders. I further order the utilization of the South Carolina National Guard's personnel with appropriate equipment, at the discretion of the Adjutant General and in coordination with the Director of the South Carolina Emergency Management Division, to take necessary and prudent actions to assist the citizens of this state.

**FURTHER**, I order that all licensing and registration requirements regarding private security personnel or companies who are contracted with South Carolina security companies in protecting property and restoring essential services in South Carolina be

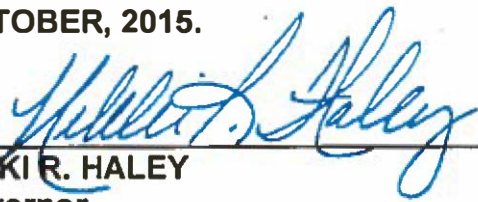
suspended, and SLED shall initiate an emergency registration process for those personnel or companies for a period specified, and in a manner deemed appropriate, by the Chief of SLED.

Further proclamations and regulations deemed necessary to insure the fullest protection of life and property during this state of emergency shall be issued orally by me and thereafter reduced to writing within the succeeding 24-hour period.

This Order shall take effect immediately.



GIVEN UNDER MY HAND AND THE  
GREAT SEAL OF THE STATE OF  
SOUTH CAROLINA, THIS 1<sup>st</sup> DAY OF  
OCTOBER, 2015.

  
\_\_\_\_\_  
NIKKI R. HALEY  
Governor

ATTEST:



\_\_\_\_\_  
MARK HAMMOND  
SECRETARY OF STATE

***EMERGENCY ORDER NO. 2015-EO-001***

***Exhibit 2: Regulation 69-77***

***(SEE THE FOLLOWING SIX PAGES)***

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Document No.  
DEPARTMENT OF INSURANCE  
Chapter 69

Statutory Authority: South Carolina Code §§38-3-10 *et seq.*; 38-3-110; 38-3-410 *et seq.*; 1-23-10 *et seq.*;  
and Executive Order 2015-21

69-77. Suspension of Certain Statutes and Regulations Regarding Insurance Matters Affecting Insureds in South Carolina Caused by Catastrophic Rainfall and Other Associated Severe Weather Due to Tropical Moisture and a Non-tropical Weather System.

**Emergency Situation:**

On October 1, 2015, by Executive Order 2015-21, Governor Nikki Haley declared a state of emergency due to storms with record-breaking rainfall and the potential for massive flooding. Areas of South Carolina received record amounts of rainfall creating the conditions for flash flooding and other emergency conditions. In less than thirty-six hours, some areas of the state received up to 24 inches of rain resulting in catastrophic flooding in portions of the Midlands, the South Carolina low country and other areas of the state. The record-breaking rainfall has put many areas of the state underwater and necessitated the closing of many businesses, roads and interstates throughout South Carolina. Significant property damage and loss of life have already been associated with this severe weather event.

The Director finds that an imminent peril to public health, safety, and welfare requires immediate promulgation of an emergency regulation.

**Text:**

**Section 1. Purpose**

This Emergency Regulation is issued to expedite and facilitate the state's recovery from this historic rainfall and flooding event and to protect the interests of South Carolina insureds in light of the recent and ongoing disaster and/or catastrophic events.

S.C. Code §§ 38-3-410 *et. seq.* gives the Director the authority to adopt procedures that facilitate recovery from the emergency. South Carolina law requires that the emergency regulation address claims reporting requirements; grace periods for payment of premiums and performance of other duties by insureds; temporary postponement of cancellations and nonrenewals; and any other rule the Director considers necessary.

In the ordinary course of business, insurers, HMOs, or other insurance related entities doing business in South Carolina and/or regulated by the Director send notices to insureds, many of which are required by statute, giving the insured certain limited periods of time within which to pay premiums or otherwise respond.

This event and its aftermath have produced a disruption in the lives of many South Carolinians making the notification process difficult because of the inability of insureds to receive mail due to mandatory and/or voluntary evacuations and/or the destruction or damage of their homes and property. Thus, many victims are currently unable to timely act or respond to such notices or to timely pay insurance premiums and need additional time within which to act or respond. Some insurers, HMOs, or other insurance related entities doing business in South Carolina and/or regulated by the Director may attempt to cancel, nonrenew or



otherwise terminate such insurance coverage. Additionally, some insureds who wish to make timely payment are prevented from making such payment because of the aforementioned circumstances. This could result in an insured being without coverage. This Emergency Regulation provides emergency relief to the insureds of South Carolina affected by this event and its aftermath.

## **Section 2. Definitions**

As used in this regulation:

- (1) "Insured" includes, but is not limited to, a person, policyholder, member, subscriber, enrollee, covered individual, or certificate holder for which coverage or benefits are provided under a policy or contract of insurance.
- (2) "Insurer" means any person or entity that is licensed, authorized, registered, or otherwise subject to regulation under the South Carolina Insurance Code that provides insurance coverage for one or more of the line(s) of insurance as defined in subitem (3).
- (3) "Line of insurance" or "lines of insurance" includes any plan, policy or contract that is subject to regulation under the South Carolina Insurance Code and includes, but is not limited to, flood insurance (not issued pursuant to the NFIP), property insurance, automobile insurance, liability insurance, casualty insurance, fidelity and surety insurance, title insurance, fire and extended coverage insurance, life insurance, accident and health insurance, credit life insurance, credit property insurance, annuities, health maintenance organizations (HMOs), excess and surplus lines insurance, reciprocal insurance, and stop loss insurance. It does not include workers' compensation insurance.
- (4) "Person" means, as defined in S.C. Code §38-1-20(44).

## **Section 3. Scope and Applicability**

This regulation shall apply to all insurers, persons, and entities subject to regulation under the South Carolina Insurance Code as it relates to any line of insurance for which the insured resides in the affected counties set forth in the federal disaster declaration as currently constituted and hereafter amended. References herein to "affected" or "impacted" counties include only those counties subject the federal disaster declaration.

Premium service company agreements relating to people, property, or risks located in the affected counties shall be subject to the provisions of this regulation. References herein to "policy" or "contract of insurance" include all agreements regulated under the Insurance Code.

## **Section 4. Extension of Time Frames for Acts and Transmittals of Funds, Including Premium Payments**

In the case of any policy, notice, statutory, or regulatory provision which imposes a time limit upon an insured to perform any act or transmit information or funds, including the payment of premium, with respect to a line of insurance subject to this regulation, for which such act or transmittal was to have been performed on or after 12:01 a.m. on October 1, 2015 but before November 1, 2015 shall be extended for a period of thirty (30) days from the date upon which such act or transmittal was otherwise due.

## **Section 5. Suspension of Cancellations and Nonrenewals**

No insurer shall effect a cancellation or nonrenewal that is effective between October 8, 2015 and October 31, 2015 unless requested by the insured. Any such coverage that is extended pursuant to this section is subject to payment of premium otherwise due for the additional coverage period.

## **Section 6. Reissuance of Notices to Insureds, Including Notices of Cancellation or Nonrenewal**

Any notice, including notices of cancellation and nonrenewal, that was issued on or after September 15, 2015 but before October 16, 2015 shall be reissued *de novo* to the insured in accordance with the notice requirements under existing South Carolina law and any such notice shall not be issued to the insured before November 1, 2015. In the case of any such notice subject to reissuance that resulted in the actual cancellation or nonrenewal on or after 12:01 a.m. on October 1, 2015 but prior to 12:01 a.m. on November 1, 2015 must be rescinded and the insured must be provided a new notice in accordance with this section.

Nothing in this section shall be interpreted to require an insurer that complies with the notice requirements herein to insure the person, property, or risk for an additional policy term or for any period beyond the time frame necessary to provide advance notice of cancellation or nonrenewal in accordance with applicable South Carolina law. This time frame will commence upon the date of re-issuance of the statutorily required notice, which must be on or after November 1, 2015.

Any such coverage that is extended pursuant to this section is subject to payment of premium otherwise due for the additional coverage period.

## **Section 7. Application of Named Storm or Hurricane Deductibles**

This event was not categorized by the National Weather Service as a hurricane or named storm. Therefore, neither named storm nor hurricane deductibles shall apply to any loss resulting from this event or its aftermath. It shall be a violation for any insurer to apply any mandatory or optional hurricane or named storm deductible to the payment of any claims for property damage attributable to this event regardless of whether the insured or risk is located in an impacted county.

## **Section 8. Policy Copy Request**

If an insured requests from his insurer a copy of his policy, the insurer shall provide a copy of the requested policy within fifteen calendar days of the written request.

## **Section 9. Cancellation and Nonrenewal**

No policy shall be cancelled or nonrenewed solely because of a claim resulting from this event or its aftermath. This section is not limited to impacted counties.

## **Section 10. New Policies**

Except for Section 9, provisions of this emergency regulation shall not apply to any new policy or contract of insurance subject to this regulation if said insurance policy or contract is effective on or after 12:01 a.m., October 12, 2015.

## **Section 11. Premium Offset**

In the course of settlement of a claim from an insured, any claim payment made to the insured or beneficiary under the insurance policy may not include an offset for any premium due unless the insured or beneficiary agrees in writing to an offset.

This section is not applicable to accident and health insurance coverage or any coverage provided by HMOs.

## **Section 12. Policy Cancellation Permissible Upon Request**

Nothing in this regulation shall prevent an insurer from cancelling a policy upon the documented written request or written concurrence of the insured.

## **Section 13. Method of Payment for Claims**

South Carolina Code § 38-59-20(4) requires that claim payments be made in a prompt, fair and equitable manner. In order to facilitate the resolution of claims in an expeditious manner, claims payment may be made by insurers by issuance of a prepaid debit card or any other form of electronic transfer provided that the insured is informed that payment in this manner is a voluntary option for payment and agrees to the method of payment; the method of payment is not subject to any fees that would result in the insured receiving less than the full amount due; if the insured is permitted, at any time, to convert any balance into cash; and if the insured is notified of applicable terms and conditions.

## **Section 14. Prescription Refills**

An insurance policy or contract, including an HMO, that provides coverage for prescription drugs must allow one early refill of a prescription if there are authorized refills remaining or allow one replacement prescription for a prescription that was recently filled for insureds who reside in the counties listed in the federal disaster declaration as presently constituted or hereafter amended. This section is valid for requests made on or before October 31, 2015.

## **Section 15. Insured's Obligation to Pay Premiums**

Nothing in this regulation shall be construed to exempt or excuse an insured from the obligation to pay the premiums otherwise due for actual insurance coverage provided.

## **Section 16. Cancellation for Fraud or Material Representation**

This regulation shall not be construed so as to prevent an insurer from canceling or terminating coverage for fraud or material misrepresentation in accordance with applicable law.

## **Section 17. Insured's Obligation to Provide Information and Cooperation**

This regulation shall not relieve an insured who has a claim caused by this event or its aftermath from compliance with the insured's obligation to provide information and cooperate in the claim adjustment or investigative process related to the claim.

## **Section 18. Interest, Penalties, Fees and Other Charges**

The right of an insurer to impose or levy any additional interest, penalty, fee or other charge in accordance with applicable South Carolina law is hereby suspended until thirty (30) days after the effective date of this regulation.

## **Section 19. Intent and Construction**

The benefits, entitlements and protections of this regulation shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum consumer protection for the insureds of South Carolina.

Insurers, producers, brokers and all other insurance related entities subject to regulation under the Insurance Code should take into consideration the difficulties related to this weather event that citizens of this state have suffered and continue to suffer and should take such consideration into account when dealing with matters relating to collection of premium, cancellation, nonrenewal, documentation and other requirements or policy provisions, including, but not limited to: notifications of hospital admissions; due dates relating to claims; premium payments; optional service fees; prior authorization requirements; and limitations on prescription refills.

#### **Section 20. Sanctions for Violations**

The Director retains the authority to enforce violations of this regulation. Accordingly, any insurer, person or entity subject to regulation under the Insurance Code who violates any provision of this regulation shall be subject to institution of administrative or civil action by the Director under any applicable provisions of the South Carolina Insurance Code, including the provisions of SC Code § 38-2-10. These provisions include penalties of up to \$15,000 for each violation or \$30,000 for each violation if the violation is willful. In addition to the fines listed, the insurer, person or entity may also be subject to suspension or revocation of its authority to transact business subject to the Insurance Code in South Carolina.

#### **Section 21. Voluntarily Extending Provisions for Additional Periods Beyond Those Imposed by This Regulation**

In accordance with the Intent and Construction provision of this regulation, nothing in this regulation or the South Carolina Insurance Code shall preclude the voluntary extension of the provisions of this regulation for additional time frames. Such voluntary extension will not be considered unfairly discriminatory if it is focused on providing additional consumer protections for persons that are particularly devastated by this event and its aftermath.

#### **Section 22. Voluntarily Applying Provisions Outside of Affected Counties**

Nothing in this regulation shall preclude the voluntary extension of the provisions of this regulation to any person, property, or risk in any non-affected county in South Carolina so long as such extension is done so in a uniform or non-discriminatory manner.

#### **Section 23. Motor Vehicle Physical Damage Appraisers**

The Director has determined that the licensure of temporary motor vehicle physical damage appraisers may be necessary because of the significant losses resulting from this event. The resolution of claims related to such covered losses may not occur expeditiously without the authorization of emergency motor vehicle physical damage appraisers by the Department due to the magnitude of the catastrophic damage. In order to ensure that motor vehicle physical damage appraisers are available to assist with the evaluation of claims for South Carolina consumers resulting from this event the Director may, by bulletin, provide the procedure for licensure for these temporary appraisers.

#### **Section 24. Authority**

The Director reserves the right to extend, amend, modify, alter or rescind all or any portions of this emergency regulation via subsequent regulation or by order of the Director.

**Section 25. Severability Clause**

If any section or provision of this emergency regulation is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of this regulation, to any persons or circumstances that can be given effect without the invalid sections or provisions and the application to any person or circumstance shall be severable.

**Section 26. Effective Date**

In accordance with SC Code § 38-3-410, this regulation shall be effective immediately and shall continue for 120 days unless otherwise extended or terminated by the Director.

**Statement of Need and Reasonableness:**

The emergency regulation is needed to protect the interests of South Carolina insurance consumers and to expedite and facilitate the state's recovery from this catastrophic rainfall and flooding event.

**Fiscal Impact Statement:**

There will be no increased costs to the state or its political subdivisions.