

**COMMERCIAL MOBILE RADIO SERVICE BOARD
ADMINISTRATIVE RULES
AS REQUIRED BY MISSISSIPPI ADMINISTRATIVE PROCEDURES LAW**

I. METHOD OF OPERATION

Commercial Mobile Radio Service Board
P.O. Box 22692
Jackson, MS 39225-2692
Phone: 601-969-2178
Fax: 601-973-7950
Email: www.mscomrs.org

[required by 25-43-2.104]

(1) There is created a Commercial Mobile Radio Service (CMRS) Board, consisting of seven (7) members to be appointed by the Governor with the advice and consent of the Senate. The members of the board shall be appointed as follows:

- (a) One (1) member from the Northern Public Service Commission District selected from two (2) nominees submitted to the Governor by the Mississippi 911 Coordinators Association;
- (b) One (1) member from the Central Public Service Commission District selected from two (2) nominees submitted to the Governor by the Mississippi Chapter of the Association of Public Safety Communication Officers;
- (c) One (1) member from the Southern Public Service Commission District selected from two (2) nominees submitted to the Governor by the National Emergency Numbering Association;
- (d) Two (2) members who are wireless provider representatives;
- (e) One (1) member who is a consumer representing the state at large with no affiliation to the three (3) trade associations or the wireless providers;
- (f) One (1) member who is a member of the Mississippi Law Enforcement Officers Association selected from two (2) nominees submitted to the Governor by the association.

The initial terms of the board members, as appointed after July 1, 2002, shall be staggered as follows: the members appointed under paragraph (d) shall serve a term of two (2) years; the member appointed under paragraph (e) shall serve a term of one (1) year. After the expiration of the initial terms, the term for all members shall be four (4) years.

(2) The board shall have the following powers and duties:

(a) To collect and distribute a CMRS emergency telephone service charge on each CMRS customer whose place of primary use is within the state. The rate of such CMRS service charge shall be One Dollar (\$1.00) per month per CMRS connection. The CMRS service charge shall have uniform application and shall be imposed throughout the state. The board is authorized to receive all revenues derived from the CMRS service charge levied on CMRS connections in the state and collected pursuant to [Section 19-5-335](#).

(b) To establish and maintain the CMRS Fund as an insured, interest-bearing account into which the board shall deposit all revenues derived from the CMRS service charge levied on CMRS connections in the state and collected pursuant to [Section 19-5-335](#). The revenues which are deposited into the CMRS Fund shall not be monies or property of the state and shall not be subject to appropriation by the Legislature. Interest derived from the CMRS Fund shall be divided equally to pay reasonable costs incurred by providers in compliance with the requirements of [Sections 19-5-331](#) through [19-5-341](#) and to compensate those persons, parties or firms employed by the CMRS Board as contemplated in paragraph (d) of this subsection. The interest income is not subject to the two percent (2%) cap on administrative spending established in [Section 19-5-335\(3\)](#).

(c) To establish a distribution formula by which the board will make disbursements of the CMRS service charge in the following amounts and in the following manner:

(i) Out of the funds collected by the board, thirty percent (30%) shall be deposited into the CMRS Fund, and shall be used to defray the administrative expenses of the board in accordance with [Section 19-5-335\(3\)](#) and to pay the actual costs incurred by such CMRS providers in complying with the wireless E911 service requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order, including, but not limited to, costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, installing, testing or maintaining all necessary data, hardware and software required in order to provide such service as well as the incremental costs of operating such service. Sworn invoices must be presented to the board in connection with any request for payment and approved by a majority vote of the board prior to any such disbursement, which approval shall not be withheld or delayed unreasonably. In no event shall any invoice for payment be approved for the payment of costs that are not related to compliance with the wireless E911 service requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order, and any rules and regulations which may be adopted by the FCC with respect to implementation of wireless E911 services.

(ii) The remainder of all funds collected by the board, which shall not be less than seventy percent (70%) of the total funds collected by the board, shall be distributed by the board monthly based on the number of CMRS connections in each ECD for use in providing wireless E911 service, including capital improvements, and in their normal operations. For purposes of distributing the funds to each ECD, every CMRS provider shall identify to the CMRS Board the ECD to which funds should be remitted based on zip code plus four (4) designation, as required by the federal Uniform Sourcing Act.

An ECD board that has within its jurisdiction zip code designations that do not adhere to county lines shall assist CMRS providers in determining the appropriate county to which funds should be distributed.

(d) To contract for the services of accountants, attorneys, consultants, engineers and any other persons, firms or parties the board deems necessary to effectuate the purposes of [Sections 19-5-331](#) through [19-5-341](#).

(e) To obtain from an independent, third-party auditor retained by the board annual reports to the board no later than sixty (60) days after the close of each fiscal year, which shall provide an accounting for all CMRS service charges deposited into the CMRS Fund during the preceding fiscal year and all disbursements to ECDs during the preceding fiscal year. The board shall provide a copy of the annual reports to the Chairmen of the Public Utilities Committees of the House of Representatives and Senate.

(f) To retain an independent, third-party accountant who shall audit CMRS providers at the discretion of the CMRS Board to verify the accuracy of each CMRS providers' service charge collection. The information obtained by the audits shall be used solely for the purpose of verifying that CMRS providers accurately are collecting and remitting the CMRS service charge and may be used for any legal action initiated by the board against CMRS providers.

(g) To levy interest charges at the legal rate of interest established in [Section 75-17-1](#) on any amount due and outstanding from any CMRS provider who fails to remit service charges in accordance with [Section 19-5-335\(1\)](#).

(h) To promulgate such rules and regulations as may be necessary to effect the provisions of [Sections 19-5-331](#) through [19-5-341](#).

(i) To make the determinations and disbursements as provided by [Section 19-5-333\(2\)\(c\)](#).

(j) To maintain a registration database of all CMRS providers and to impose an administrative fine on any provider that fails to comply with the registration requirements in [Section 19-5-335](#).

(3) The CMRS service charge provided in subsection (2)(a) of this [section](#) and the service charge provided in [Section 19-5-357](#) to fund the training of public safety telecommunicators shall be the only charges assessed to CMRS customers relating to emergency telephone services.

(4) The board shall serve without compensation; however, members of the board shall be entitled to be reimbursed for actual expenses and travel costs associated with their service in an amount not to exceed the reimbursement authorized for state officers and employees in [Section 25-3-41](#), Mississippi Code of 1972.

(5) It is the Legislature's intent to ensure that the State of Mississippi shall be Phase I compliant by July 1, 2005. For purposes of this subsection, Phase I compliant means the mandate by the FCC that requires any carrier when responding to a PSAP to define and deliver data related to the cell site location and the caller's call-back number.

II. ORAL PROCEEDINGS ON PROPOSED RULES

[suggested by 25-43-3.104(2)(d), not mandatory]

1.Scope. This rule applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and amendments to rules before the Commercial Mobile Radio Service Board pursuant to §25-43-3.104.

2.When Oral Proceedings will be Scheduled on Proposed Rules. The CMRS Board will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, an agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule.

3. Request Format. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches

by 11 inches). Requests may be in the form of a letter addressed to the Commercial Mobile Radio Service Board and signed by the requestor(s).

4. Notification of Oral Proceeding. The date, time and place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.

5. Presiding Officer. The Chairman or his designee, who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

6. Public Presentations and Participation.

(a) At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.

(b) Persons wishing to make oral presentations at such a proceeding shall notify the CMRS Board at least one business day prior to the proceeding and indicate the general subject of their presentations. The presiding chairman in his or her discretion may allow individuals to participate that have not previously contacted the CMRS Board.

(c) At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding chairman.

(d) The presiding chairman may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(e) Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.

(f) There shall be no interruption of a participant who has been given the floor by the presiding chairman, except that the presiding chairman may in his or her discretion interrupt or end the partisan's time where the orderly conduct of the proceeding so requires.

7. Conduct of Oral Proceeding.

(a) Presiding chairman. The presiding chairman shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding chairman shall (i) call proceeding to order; (ii) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the CMRS Board for the proposed rule; (iii) call on those individuals who have contacted the CMRS Board about speaking on or against the proposed rule; (iv) allow for rebuttal statements following all participant's comments; (v) adjourn the proceeding.

(b) Questions. The presiding chairman, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding chairman may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made

by those participants in that proceeding; but no participant shall be required to answer any question.

(c) Physical and Documentary Submissions. Submissions presented by participants in an oral proceeding shall be submitted to the presiding chairman. Such submissions become the property of the CMRS Board and are subject to the Board's public records request procedure.

(d) Recording. The CMRS Board may record oral proceedings by stenographic or electronic means.

III. DECLARATORY OPINIONS

[required by 25-43-2.103(2)]

1. Scope. These rules set forth the Commercial Mobile Radio Service Board, hereinafter "Board," rules governing the form and content of requests for declaratory opinions, and the Board's procedures regarding the requests, as required by Mississippi Code § 25-43-2.103. These rules are intended to supplement and be read in conjunction with the provisions of the Mississippi Administrative Procedures Law, which may contain additional information regarding the issuance of declaratory opinions. In the event of any conflict between these rules and the Mississippi Administrative Procedures Law, the latter shall govern.

2. Persons Who May Request Declaratory Opinions. Any person with a substantial interest in the subject matter may request a declaratory opinion from the Board by following the specified procedures. "Substantial interest in the subject matter" means: an individual, business, group or other entity that is directly affected by the Board's administration of the laws within its primary

jurisdiction. “Primary jurisdiction of the agency” means the agency has a constitutional or statutory grant of authority in the subject matter at issue.

3. Subjects Which May Be Addressed In Declaratory Opinions. The Board will issue declaratory opinions regarding the applicability to specified facts of: (1) a statute administered or enforceable by the Board or (2) a rule promulgated by the Board. The Board will not issue a declaratory opinion regarding a statute or rule which is outside the primary jurisdiction of the agency.

4. Circumstances In which Declaratory Opinions Will Not Be Issued. The Board may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

- (a) lack of clarity concerning the question presented;
- (b) there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
- (c) the statute or rule on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
- (d) the facts presented in the request are not sufficient to answer the question presented;
- (e) the request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
- (f) the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the statute or rule on which a declaratory opinion is sought;
- (g) no controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute or rule;
- (h) the question presented by the request concerns the legal validity of a statute or rule;
- (i) the request is not based upon facts calculated to aid in the planning of future conduct but is, instead, based on past conduct in an effort to establish the effect of that conduct;
- (j) no clear answer is determinable;
- (k) the question presented by the request involves the application of a criminal statute or a set of facts which may constitute a crime;

(l) the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;

(m) The question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's opinion;

(n) A similar request is pending before this agency or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law.

(o) Where issuance of a declaratory opinion may adversely affect the interests of the State, the [agency] or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise;

(p) The question involves eligibility for a license, permit, certificate or other approval by the [agency] or some other agency, and there is a statutory or regulatory application process by which eligibility for said license, permit, certificate or other approval would be determined.

5. Written Request Required. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the Board.

6. Where to Send Requests. All requests must be mailed, delivered or transmitted via facsimile to the Board. The request shall clearly state that it is a request for a declaratory opinion. No oral, telephone requests or email requests will be accepted for official opinions.

7. Name, Address and Signature of Requestor. Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any other administrative or judicial tribunal.

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

(a) a clear and concise statement of all facts on which the opinion is requested;

(b) a citation to the statute or rule at issue;

(c) the question(s) sought to be answered in the opinion, stated clearly;

(d) a suggested proposed opinion from the requestor, stating the answers desired by petitioner and a summary of the reasons in support of those answers;

(e) the identity of all other known persons involved in or impacted by the described factual situation, including their relationship to the facts, name, mailing address and telephone number; and

(f) a statement to show that the person seeking the opinion has a substantial interest in the subject matter.

10. Time for Board's Response. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Board shall, in writing:

(a) issue a declaratory opinion regarding the specified statute or rule as applied to the specified circumstances;

(b) decline to issue a declaratory opinion, stating the reasons for its action; or

(c) agree to issue a declaratory opinion by a specified time but not later than ninety (90) days after receipt of the written request;

The forty-five (45) day period shall begin running on the first State of Mississippi business day on or after the request is received by the Board, whichever is sooner.

11. Opinion Not Final for Sixty Days. A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Board may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

12. Notice by Board to third parties. The Board may give notice to any person, agency or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from other persons, agencies or other entities other than the requestor.

13. Public Availability of Requests and Declaratory Opinions. Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Public Records Act and the Board's public records request procedure. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

14. Effect of a Declaratory Opinion. The Board will not pursue any civil, criminal or administrative action against a person who is issued a declaratory opinion from the Board and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. Any declaratory

opinion rendered by the Board shall be binding only on the Board and the person to whom the opinion is issued. No declaratory opinion will be used as precedent for any other transaction or occurrence beyond that set forth by the requesting person.