

**MISSISSIPPI STATE BOARD OF CONTRACTORS
PROPOSED ADMINISTRATIVE PROCEDURES RULES**

I. METHOD OF OPERATION

1. Scope. Part I of these Rules is promulgated pursuant to Miss. Code Ann. § 25-43-2.104 of the Administrative Procedures Law.

2. Description of Mississippi State Board of Contractors. Reference is made to the Mississippi Code Annotated §§ 31-3-1, et seq. and 73-59-1, et seq. (1972), which creates and sets out the duties and responsibilities of the Mississippi State Board of Contractors ("Board") and the Standing Committee on Residential Builders and Remodelers ("Standing Committee"). Regulations adopted by the Board are the Mississippi State Board of Contractors Regulations. The Board's staff is composed of two (2) divisions: Commercial, which regulates the issuance of certificates of responsibility for commercial contractors, and Residential, which regulates the issuance of licenses to residential builders and remodelers.

3. Where and how public may obtain information. The text of all Board rules, as well as information regarding pending rules, meetings and the like may be obtained by visiting the Board's website at www.msdoc.state.ms.us. Requests for Declaratory Opinions may be made pursuant to Part III of these rules. Otherwise, requests for information may be made pursuant to and in accordance with the Mississippi Open Records Act by submitting written requests to:

The Mississippi State Board of Contractors
Post Office Box 4124
Jackson, Mississippi 39232-0279
ATTN: PUBLIC RECORDS REQUEST

II. ORAL PROCEEDINGS ON PROPOSED RULES

1. Scope. Part II of these Rules is promulgated pursuant to Miss. Code Ann. § 25-43-3.104(2)(d) of the Administrative Procedures Law, and 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 Board under § 25-43-3.104.

2. When Oral Proceedings will be Scheduled on Proposed Rules. The 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 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 Executive Secretary, 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 Board at least one business day prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not previously contacted the 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 officer.

(d) The presiding officer 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 officer, except that the presiding officer may in his or her discretion interrupt or end the participant's time where the orderly conduct of the proceeding so requires.

7. Conduct of Oral Proceeding.

(a) Presiding officer. The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall (i) call the 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 Board for the proposed rule; (iii) call on those individuals who have contacted the Board about speaking concerning the proposed rule; (iv) allow for rebuttal statements following all participant's comments; and (v) adjourn the proceeding.

(b) Questions. The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer 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 officer. Such submissions become the property of the Board and are subject to the Board's public records request procedure.

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

III. DECLARATORY OPINIONS

1. Scope. Part III of these Rules is promulgated pursuant to Miss. Code Ann. § 25-43-2.103(2) of the Administrative Procedure Law, and is intended to set forth the Board's 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; or (3) an order issued 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) the matter is outside the primary jurisdiction of the Board;

(b) lack of clarity concerning the question presented;

(c) there is pending or anticipated litigation, administrative action, or other adjudicative proceedings which may either answer the question presented by the request or otherwise make an answer unnecessary;

(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, rule or order about 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, rule or order;

(h) the question presented by the request concerns the legal validity of a statute, rule or order;

(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 another 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 Board 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 Board 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 Mississippi State Board of Contractors
Post Office Box 4124
Jackson, Mississippi 39232-0279
ATTN: DECLARATORY OPINION REQUEST

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 relevant to the question(s) presented;
- (b) clear identification of the statute, rule or order at issue;
- (c) the question(s) sought to be answered in the opinion, stated clearly;
- (d) the identity of all other known persons involved in or impacted by the described factual situation, including their relationship to the facts, their name, mailing address and telephone number; and
- (e) a statement sufficient to show that the person seeking the opinion has a substantial interest in the subject matter.

9. 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, rule or order 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.

10. 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.

11. 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.

12. Provision for Hearing. If the Board in its sole discretion deems a hearing necessary or helpful in determining any issue concerning a request for a declaratory opinion, the Board may schedule such a hearing. Notice of the hearing shall be given to all interested parties unless waived. Notice mailed by first class mail seven (7) calendar days prior to the hearing shall be deemed appropriate. The hearing shall be conducted in a manner deemed appropriate by the Board except that the Board shall allow the requestor to participate in any hearing and may allow the participation of others in its sole discretion as it deems appropriate.

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 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 concurrence beyond that set forth by the requesting person.