TITLE 37 - TRANSPORTATION AND HIGHWAYS

PART V CHAPTER 1 – TRANSPORTATION ARBITRATION BOARD

Chapter 01 Method of Operation and Procedures

Section 100

Scope. Chapter 01 of these Rules is promulgated pursuant to Miss. Code Ann. § 25-43-2.104 as amended

200 Description of State Transportation Arbitration Board (hereinafter "Board")

201 The public may obtain a description of the Board's organization and operation from the Rules of Procedure and Practice of the Board currently on file with the Secretary of State (SOS). Additionally, the public may access information relevant to the description of the organization and its general course and method of its operations by reviewing Sections 65-2-1, et seq., of the Mississippi Code of 1972, as amended, which may be accessed at www.state.ms.us. The public may also request information, make submissions or requests including Mississippi Open Records Act requests by contacting the Secretary of the Board at 406 Treeline Drive, Brandon, Mississippi 39042.

202 All information as to the rules of practice concerning all formal and informal proceedings are available by reviewing the rules and regulations of the Board currently on file with the Secretary of State (SOS). Further information may be obtained by reviewing Sections 65-2-1, et seq., of the Mississippi Code of 1972 as amended which may be accessed at www.state.ms.us.

203 The Board meets for hearings in the Conference Room of the Mississippi Road Builders Association, Inc., 601 George St., Jackson, Mississippi 39225, or at other locations selected by the Board. The time, place and location of hearings will be communicated by the Board to the parties. Members of the public may contact the Secretary at the above address to inquire if any meetings or hearings are scheduled.

Chapter 02 Public Hearings

Section 100

Scope. Chapter 02 of these Rules is promulgated pursuant to Miss. Code Ann. § 25-43-3.104 as amended and sets forth the Board's procedures for involving the public in the development of rules through public meetings and/or public hearings as required by Mississippi Code Ann. § 25-43-3.104 as amended.

200 Requirements for Public Hearings

201 At the time a rule is filed with the SOS, the Board staff must publish notice where written submissions or written requests for an opportunity to make oral presentations on the proposed rule may be submitted.

202 A public hearing is required if, during the first 20 business days of the rule notice, a written request for a public hearing is received from one of the following:

202.01 a political subdivision

202.02 an agency, or

202.03 10 persons

203 If a public hearing is required, the Board staff will establish the time, date and location for the public hearing. The Board staff shall then:

203.01 Ensure that the public hearing is not scheduled earlier than 23 business days after filing notice of oral proceeding with Board staff.

203.02 File notice of the time, date, and location of the public hearing with the SOS.

203.03 Within three (3) days of filing notice with SOS, Board staff must mail a copy of the notice to those who are on the notification list.

300 Conducting Public Hearings

300.01 Public hearings must be open to the public.

300.02 The presiding officer designated by the Board will preside at the proceeding.

400 Availability of Public Hearing Proceedings

400.01 A verbatim written transcript of the oral proceedings at each public hearing shall be produced.

Chapter 03 Declaratory Opinions

Section 100

Scope. Chapter 03 of these Rules is promulgated pursuant to Miss. Code Ann. § 25-43-2.103(2) as amended and is intended to set forth the Board's procedures regarding requests for declaratory opinions.

200 Persons Who May Request Declaratory Opinions

201 Any person with a substantial interest in the subject matter may request the Board for a declaratory opinion.

300 Subjects Which May Be Addressed In Declaratory Opinions

300.01 The Board will issue declaratory opinions regarding the applicability to specified facts of:

300.01(1) A statute administered or enforceable by the Board,

300.01(2) A rule promulgated by the Board, or

300.01(3) An order issued by the Board.

300.02 The Board will not issue a declaratory opinion regarding a statute, rule or order which is beyond the primary jurisdiction of the Board.

400 Circumstances in which Declaratory Opinions Will Not Be Issued

400.01 The Board may, for good cause, refuse to issue a declaratory opinion. Without limiting the generality of the foregoing, the circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

400.01(1) The matter is outside the jurisdiction of the Board;

400.01(2) Lack of clarity concerning the question presented;

400.01(3) There is pending or anticipated litigation, administrative action, or other adjudication;

400.01(4) The statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;

400.01(5) The facts presented in the request are not sufficient to answer the question presented;

400.01(6) The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;

400.01(7) 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 rule, statue or order on which a declaratory opinion is sought;

400.01(8) 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;

400.01(9) The question presented by the request concerns the legal or constitutional validity of a statute, rule or order;

400.01(10) The requestor has not suffered an injury or threatened injury fairly traceable to the application of the statute, rule or order;

400.01(11) No clear answer is determinable;

400.01(12) The question presented by the request involves the application of a criminal statute or sets for facts which may constitute a crime;

400.01(13) The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;

400.01(14) The question is currently the subject of an Attorney General's opinion request;

400.01(15) The question has been answered by an Attorney General's opinion;

400.01(16) The request is not made in good faith; or

400.01(17) The request is harassing in nature or for any other unlawful purposes.

400.02 A declaratory opinion will not be issued where a similar request is pending before this Board 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.

400.03 A declaratory opinion will not be issued if it 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.

400.04 Where a request for a declaratory opinion involves a question of law, the Board may refer the matter to the State Attorney General.

500 Form of the Request for a Declaratory Opinion

500.01 Written Requests Required. Each request must be printed or typewritten, or must be in legible handwriting. Requests may be in the form of a letter addressed to the Board or in the form of a pleading as might be addressed to a court.

500.02 Where to Send Request: All requests must be mailed or delivered to the Secretary of the Board at 406 Treeline Drive, Brandon, Mississippi 39042. The request and its envelope shall clearly state that it is a request for a declaratory opinion. Oral and telephone requests are unacceptable.

500.03 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, unless represented by an attorney, in which case the attorney may sign the request. The signing party 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 agency, administrative or judicial tribunal.

500.04 Single transaction. A request must be limited to a single transaction or occurrence.

500.05 Question Presented. Each request shall contain the following:

500.05(1) A clear identification of the statute, rule, or order at issue;

500.05(2) A concise statement of the issue or question presented for the declaratory opinion;

500.05(3) A full, complete, and accurate statement of all facts relevant to a resolution of the question presented;

500.05(4) The identify all other known persons involved in or impacted by the factual situation causing the request including their relationship to the facts; name, mailing address and telephone number;

500.05(5) A statement sufficient to show that the person seeking relief is substantially affected by the rule.

500.06 The terms of the proposed opinion suggested by the requestor may be submitted with the request or may be requested by the agency.

600 Time for the Board 's Response

600.01 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:

600.01(1) Issue an opinion declaring the applicability of the specified statute, rule, or order to the specified circumstances;

600.01(2) Decline to issue a declaratory opinion, stating the reasons for its action; or

600.01(3) Agree to issue a declaratory opinion or a written statement declining to issue a declaratory opinion by a specified time but no later than ninety (90) days after receipt of the written request.

600.02 When Period Begins to Run. The forty-five (45) day period shall begin running on the first State of Mississippi business day that the request is received in the Board offices.

700 Public Availability of Requests and Declaratory Opinions

700.01 The Board staff will make declaratory opinions and requests for declaratory opinions available for public inspection and copying at the expense of the viewer during normal business hours. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is exempted from disclosure under the Mississippi Public Records Act or is otherwise confidential by law shall be exempt from this requirement.

800 Effect of Declaratory Opinions

800.01 The Board will not pursue any civil, criminal, or administrative action against a person who is issued a declaratory opinion and who, in good faith, follows the direction given in the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong and without any substantial support. 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 of facts described in the original request.

Chapter 04 Availability of Board Orders

Section 100

Scope. Chapter 04 of these Rules is promulgated pursuant to Miss. Code Ann. § 25-42-2.102 as amended and sets forth the procedures for making Board Orders available to the public.

200 General. The Board staff will be responsible for making Board Orders available for public inspection and copying, indexed by name and subject. This is subject to any confidentiality provisions established by law.

300 Using Board Orders as Precedent

300.01 The written final Order can't be used as precedent to the detriment of any person by the Board until it has been made available for public inspection, indexed by name and subject.

300.01(1) This is inapplicable to any person who has actual timely knowledge of the Order.

300.01(2) The burden of proof is on the Board.

Chapter 05 Rules of Procedure and Practice

Section 100 Requests for Arbitration Generally

101 The Contractor or Mississippi Transportation Commission may file for arbitration anytime prior to final payment being made and accepted by the contractor.

102 The Contractor may not request arbitration of a monetary or non-monetary claim unless a written claim by the contractor has been submitted to the Chief Engineer, Mississippi Department of Transportation, and until either: (1) the claim is denied in whole or in part by the Chief Engineer in writing or, (2) sixty days from date of submission have passed without a written decision by the Chief Engineer.

103 Absent agreement of the parties, the Board shall have jurisdiction to hear matters concerning Seven Hundred Fifty Thousand Dollars ($750,000.00) or less per contract without regard to the size of the contract. The parties, by mutual written agreement, may submit to the Board claims in excess of the jurisdictional limit of Seven Hundred Fifty Thousand Dollars ($750,000.00). Absent agreement of the parties, the number of arbitration proceeding regarding monetary issues shall be limited to three (3) per contract.

Section 200 Notice to the Board of Request for Arbitration

201 All requests for arbitration shall be made in writing, addressed to the Secretary of the Board, with a copy sent to the opposing party. If made by a contractor, a copy of the request shall be mailed to the Chief Engineer, Mississippi Department of Transportation, and if by the Mississippi Transportation Commission, a copy shall be mailed to the authorized agent or officer of the contractor. A copy of the request for arbitration shall also be mailed to each member of the Board. Written requests for arbitration shall be submitted with forms prescribed by the Board. SEE ATTACHED FORM AB 2.

202 The party requesting arbitration must pay a fee of two hundred dollars ($200.00) with its request. Checks shall be payable to "STATE TRANSPORTATION ARBITRATION BOARD". Each party will be notified by the Secretary, in writing, of the date, place and time for hearing and other action of the Board concerning the claim under consideration. SEE ATTACHED FORM AB 3.

203 The inclusion of attorney fees as a part of a claim or award is not considered appropriate.

Section 300 Discovery

301 The purpose of the Board is to fairly adjudicate disputes between the Contractors and the Commission. To this end, at least five business days before the scheduled hearing date,

each party of the dispute shall be required to disclose to the other party and each Board member, as a minimum, the general nature of the proof, including any exhibits, to be presented to the Board at the hearing, and a complete list of witnesses that it may call to testify.

Section 400 Hearings

401 Hearings will be held in the conference room of Mississippi Road Builders Association, Inc., located at 601 George Street, Jackson, Mississippi 39225, or, at other locations selected by the Board.

402 As required by the statute, the Board shall consider only, and be bound only, by the evidence submitted. The Board shall hand down its findings, decisions, and order within sixty (60) days after completion of testimony. The Board may conduct its own investigation as outlined in Section 600 of this document.

403 Both parties shall be given adequate notice of all hearings conducted, and may be in attendance both personally and by counsel. The Chairman of the Board shall preside at all hearings, which shall be conducted in an orderly manner. Strict conformance to rules of evidence is unnecessary as to permit the introduction of all relevant and material evidence pertaining to the issue of the matter in controversy.

404 The requesting party, followed by the opposing party, may make a brief opening statement of its case to the Board before offering testimony or written evidence. All witnesses will be sworn before testifying, and shall identify themselves for the record before making any statement in evidence.

404.01 Witnesses shall not be interrupted during testimony except by a Board member. Board members may ask questions of witnesses or others, at any time during arbitration proceedings. After the witness completes his/her testimony, the opposing party may question the witness.

405 The party requesting arbitration shall have the burden of presenting and establishing a prima facie case of its claim. The opposing party will then have the opportunity of offering its case. Rebuttal may then be offered by the party requesting arbitration, at the close of which, testimony shall be considered completed.

406 Either party may offer final summary statements to the Board, with the party requesting the arbitration given the opportunity of speaking first. All hearings shall be conducted informally but in such a manner as to insure order and fairness to both parties.

407 The Board, at its discretion, may allow or require, additional witnesses, documents, or other proof be produced at any hearing.

407.01 The Board may subpoena witnesses or documents upon the request of any party or independently.

407.02 Should this occur, the party opposite shall have a reasonable opportunity to present rebuttal witnesses or proof relevant to the issues presented.

408 The Board shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The Board shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during testimony of any other witnesses. It shall be discretionary with the Board to determine the propriety of the attendance of any other person other than a party and its representatives.

Section 500 Record of Proceedings

501 A full and complete record of all proceedings shall be taken stenographically and be recorded and a transcript thereof prepared. Deliberations of the Board are not to be made a part of the record. Documents offered in evidence, to be considered by the Board, shall be a part of the record. The Board shall be the judge of the relevance and competency of documents and testimony. Each witness giving testimony shall be given an opportunity to make full statements subject to reasonable limitations imposed by the Board. Relevant documentary evidence may be introduced in evidence subject to reasonable limitations by the Board.

Section 600 Findings and Decisions of the Board

601 The Board will make written findings of fact and conclusions of law and shall make its decisions in writing based on the evidence and testimony presented, all of which will be made a part of the record of the proceeding. The Board will determine only the proper interpretation and application of contract provisions involved in a dispute. The Board may conduct its own investigation by less than the whole membership by authority of a written directive by the Chairman and such directive and a written summary of the investigation shall be made a part of the records. However, at a minimum, the MDOT member and the member appointed by the Roadbuilders shall participate in any such investigation.

Section 700 Costs

701 The cost of the arbitration proceedings, including the costs of the Board Members as set out by the Mississippi Transportation Commission under Section 65-2-3 and 65-2-11, Mississippi Code of 1972, as amended, shall be assessed equally to the parties in dispute. If appeal is taken, the cost of transcribing the record shall be paid by the party requesting same.

Section 800 Appeals for the Order of Board

801 Either party may appeal from an order of the Board within fifteen (15) days from the date of filing the order with Clerk of the Circuit Court. Appeal shall be by petition to the

Circuit Court of any county in which the contractor operates or has an office or place of business. The appeals process is outlined in Section 65-2-15, Mississippi Code of 1972, as amended.

Section 900 Forms

901 Form AB 2 (attached hereto)

902 Form AB 3 (attached hereto)

STATE TRANSPORTATION ARBITRATION BOARD

FOR OFFICE USE ONLY

Arbitration Number	_____	Amount Received	_____
Date Filed	_____	Costs	_____
Hearing Date	_____		_____
Order Filed	_____		_____

REQUEST FOR ARBITRATION

1. Name and Address of claimant _____

   _____

2. Mississippi Department of Transportation Project Number: _____

   Federal Number (if applicable) _____

   Location of Project _____

3. Date Claim rejected _____

4. Claimant wishes to make only written presentation to Arbitration Board: YES _____ NO _____

5. Claimant will make oral and written presentation to Arbitration Board: YES _____ NO _____

6. Present for the claimant:

   _____ _____ _____

   _____ _____ _____

   _____ _____ _____

7. Present for the Mississippi Department of Transportation: (to be completed by MDOT)

   _____ _____ _____

   _____ _____ _____

   _____ _____ _____

8. Brief, concise statement of claims (4 copies) (Make attachment if needed)

9. If the claim is filed by the Contractor, a copy of the claim submitted to MDOT **or** a copy of MDOT's denial, if any, must be attached to this form.

CLAIMANT'S SIGNATURE:

_____

By: _____

MDOT RECEIVED NOTICE OF REQUEST FOR ARBITRATION:

By: _____

Date: _____

Note: Return a copy of this form with Paragraph 7 completed

Form AB 2 (Revised 10/2007)

STATE TRANSPORTATION ARBITRATION BOARD
P.O. Box 1850, Jackson, Mississippi 39215-1850

NOTICE OF ARBITRATION HEARING

TO: _____ Executive Director, Mississippi Department of Transportation

TO: _____ Title _____
Contracting Firm

RE: State Project No. _____ Federal Aid No. _____

Location _____

_____

Each of you is hereby given notice of an arbitration hearing reference the above project to be held by the State Transportation Arbitration Board with the following conditions to apply:

DATE: _____ TIME: _____

PLACE: _____

_____

Mississippi Department of Transportation is requested to have the following personnel present for interrogation by the contractor:

NAME _____ TITLE _____

NAME _____ TITLE _____

NAME _____ TITLE _____

NAME _____ TITLE _____

The Contractor advises that the following conditions will apply to his presentations:

a. Will be written presentation only: YES _____ NO _____

b. Will be both written and oral: YES _____ NO _____

c. Will be represented by counsel: YES _____ NO _____

Name of Counsel: _____

d. Will have the following personnel present for oral statement:

NAME _____ TITLE _____

NAME _____ TITLE _____

NAME _____ TITLE _____

Other pertinent information: _____

_____

_____

Written presentation to the Board at the hearing shall be submitted with five (5) copies and shall be notarized.

Each addressee is directed to acknowledge receipt of this notice by return mail.

DATE _____ SIGNED _____
Chairman, State Transportation Arbitration Board

Form AB-3 (Revised 10/2007)