

# MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY

## TITLE 31: PUBLIC SAFETY

### PART 4: DRIVER SERVICES AND CRIMINAL INFORMATION CENTER DECLARATORY OPINIONS ADMINISTRATIVE CODE

#### Part 4 Chapter 1 Declaratory Opinions

##### Rule 1.1 Model Rules.

This chapter consists of model rules addressing the public's request for declaratory opinions and an agency's disposition of requests for declaratory opinions. The Secretary of State's Office is required to provide these model rules under *Miss. Code Ann.* § 25-43-2.105. Agencies are not required to adopt these model rules.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

##### Rule 1.2 Application of Chapter.

This chapter sets forth the Mississippi Department of Public Safety's rules governing the form, content, and filing of requests for declaratory opinions, the procedural rights of persons in relation to the written requests, and the Mississippi Department of Public Safety's procedures regarding the disposition of requests as required by *Miss. Code Ann.* § 25-43-2.103.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

##### Rule 1.3 Scope of Declaratory Opinions.

The Mississippi Department of Public Safety will issue declaratory opinions regarding the applicability to specified facts of:

1. a statute administered or enforceable by the Mississippi Department of Public Safety,
2. a rule promulgated by the Mississippi Department of Public Safety, or
3. an order issued by the Mississippi Department of Public Safety.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

##### Rule 1.4 Scope of Declaratory Opinion Request.

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

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

### Rule 1.5 How to Submit Requests.

When a person with substantial interest, as required by Section 25-43-2.103 of the Administrative Procedures Act, requests a declaratory opinion, the requestor must submit a printed, typewritten, or legibly handwritten request.

1. Each request must be submitted on 8-1/2" x 11" white paper.
2. The request may be in the form of a letter addressed to the Mississippi Department of Public Safety or in the form of a pleading as if filed with a court.
3. Each request must include the full name, telephone numbers, and mailing address of the requestor(s).
4. 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.
5. Each request must clearly state that it is a request for a declaratory opinion.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

### Rule 1.6 Signature Attestation.

Any party who signs the request 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.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

### Rule 1.7 Request Content Requirement.

Each request must contain the following:

1. A clear identification of the statute, rule, or order at issue;
2. The question for the declaratory opinion;
3. A clear and concise statement of all facts relevant to the question presented;
4. The identity of all other known persons involved in or impacted by the facts giving rise to the request including their relationship to the facts, and their name, mailing address, and telephone number; and
5. A statement sufficient to show that the requestor has a substantial interest in the subject matter of the request.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 1.8 Reasons for Refusal of Declaratory Opinion Request.

The Mississippi Department of Public Safety 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:

1. The matter is outside the primary jurisdiction of the Mississippi Department of Public Safety;
2. Lack of clarity concerning the question presented;
3. There is pending or anticipated litigation, administrative action or anticipated administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
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;
5. The facts presented in the request are not sufficient to answer the question presented;
6. The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
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, statute, or order on which a declaratory opinion is sought;
8. No controversy exists or is certain to arise which raises a question concerning the application of the statute, rule, or order;
9. The question presented by the request concerns the legal validity of a statute, rule, or order;
10. 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;
11. No clear answer is determinable;
12. The question presented by the request involves the application of a criminal statute or sets forth facts which may constitute a crime;
13. The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;

14. The question is currently the subject of an Attorney General's opinion request;
15. The question has been answered by an Attorney General's opinion;
16. One or more requestors have standing to seek an Attorney General's opinion on the proffered question;
17. 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; or
18. The question involves eligibility for a license, permit, certificate or other approval by the Mississippi Department of Public Safety or some other agency and there is a statutory or regulatory application process by which eligibility for said license, permit, or certificate or other approval may be determined.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

#### Rule 1.9 Agency Response.

1. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Mississippi Department of Public Safety shall, in writing:
  - a. Issue an opinion declaring the applicability of the statute, rule, or order to the specified circumstances;
  - b. Agree to issue a declaratory opinion by a specified time but no later than ninety (90) days after receipt of the written request; or
  - c. Decline to issue a declaratory opinion, stating the reasons for its action.
2. The forty-five (45) day period shall begin on the first business day after which the request is received by the Mississippi Department of Public Safety.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

#### Rule 1.10 Availability of Declaratory Opinions and Requests for Opinions.

Declaratory opinions and requests for declaratory opinions shall be 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, subject, and date of issue. 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.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).