

# **Title 01 - Administrative Law and Secretary of State**

## **Part I - Administrative Rules**

### **Chapter 01 Responsibilities of the Secretary of State under the Administrative Procedures Law**

#### Purpose

- 100 This part outlines the responsibilities of the Secretary of State under the Mississippi Administrative Procedures Law, and defines terms used in these rules; it also provides for the publication of the Mississippi Administrative Code and Mississippi Administrative Bulletin. Part II provides model rules on subjects in common to various agencies.
- 101 The Mississippi Administrative Procedures Law requires the Secretary of State to:
1. Compile an Administrative Code
  2. Issue certain standards for the filing of administrative rules with the Secretary of State's Office
  3. Publish an Administrative Bulletin, and
  4. Issue model administrative rules for use by other state agencies
- 102 (Reserved)

### **Chapter 02 Definitions**

#### Statutory Definitions

- 100 These sections repeat, for the convenience of the public, the definitions in Section 25-43-1.102 of the Mississippi Administrative Procedures Law.
- 101 "Agency" means a board, commission, department, officer or other administrative unit of this state, including the agency head, and one or more members of the agency head or agency employees directly or indirectly purporting to act on behalf or under the authority of the agency head. The term does not include the Legislature or any of its component units, the judiciary or any of its component units or the Governor. The term does not include a political subdivision of the state or any of the administrative units of a political subdivision. To the extent it purports to exercise authority subject to any provision of this chapter, an administrative unit otherwise qualifying as an "agency" must be treated as a separate agency even if the unit is located within or subordinate to another agency.

- 102 "Agency head" or "head of the agency" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law.
- 103 "Agency proceeding" or "proceeding" means the process by which an agency considers:
1. A declaratory opinion pursuant to Section 25-43-2.103, or
  2. A rule pursuant to Section 25-43-3.101 et seq .
- 104 "Agency record" means the official rule-making record of an agency pursuant to Section 25-43-3.112.
- 105 "Declaratory opinion" means an agency opinion rendered in accordance with the provisions of Section 25-43-2.103.
- 106 "Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities or other legal interests of one or more specific persons. An order shall be in writing signed by a person with authority to render the order, or if more than one (1) person has such authority by at least that number of such persons as jointly have the authority to render the order, or by a person authorized to render the order on behalf of all such persons. The term does not include an executive order issued by the Governor pursuant to Section 25-43-1.104, an opinion issued by the Attorney General pursuant to Section 7-5-25, an opinion issued by the Ethics Commission pursuant to Section 25-4-17, or a declaratory opinion rendered in accordance with Section 25-43-2.103.
- 107 "Person" means an individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character, and includes another agency.
- 108 "Provision of law" or "law" means the whole or a part of the federal or state Constitution, or of any federal or state statute, case law or common law, rule of court, executive order, or (v) rule or order of an administrative agency.
- 109 "Rule" means the whole or a part of an agency regulation or other statement of general applicability that implements, interprets or prescribes:  
Law or policy, or  
The organization, procedure or practice requirements of an agency. The term includes the amendment, repeal or suspension of an existing rule.  
"Rule" does not include:
1. A regulation or statement concerning only the internal management of an agency which does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public;
  2. A regulation or statement that establishes criteria or guidelines to be used by the staff of an agency in performing audits, investigations or inspections, settling commercial disputes, negotiating commercial arrangements or in the defense, prosecution or settlement of cases, if disclosure of the criteria or guidelines would:

- a. Enable law violators to avoid detection;
  - b. Facilitate disregard of requirements imposed by law; or
  - c. Give a clearly improper advantage to persons who are in an adverse position to the state;
3. A regulation or statement that only establishes specific prices to be charged for particular goods or services sold by an agency;
  4. A regulation or statement concerning only the physical servicing, maintenance or care of agency owned or operated facilities or property;
  5. A regulation or statement relating only to the use of a particular facility or property owned, operated or maintained by the state or any of its subdivisions, if the substance of the regulation or statement is adequately indicated by means of signs or signals to persons who use the facility or property;
  6. A regulation or statement directly related only to inmates of a correctional or detention facility, students enrolled in an educational institution or patients admitted to a hospital, if adopted by that facility, institution or hospital;
  7. A form whose contents or substantive requirements are prescribed by rule or statute, and instructions for the execution or use of the form;
  8. An agency budget;
  9. A compact or agreement between an agency of this state and one or more agencies of another state or states; or
  10. An opinion of the Attorney General pursuant to Section 7-5-25, an opinion of the Ethics Commission pursuant to Section 25-4-17, or an Executive Order of the Governor.

110 "Rule-making" means the process for formulation and adoption of a rule.

111 (Reserved)

#### Non-Statutory Definitions

200 These sections provide additional definitions used in Parts I and II.

201 "Adjudication" means an evidentiary hearing required by any provision of law for the determination of facts necessary to formulate an order.

202 "Interpretive Statement" means a written expression of the opinion of an agency, entitled an interpretive statement by the agency head or its designee, about the meaning of a statute or other provision of law, of a court decision, or of an agency order. An interpretive statement is advisory only, and does not bind any person outside the agency.

203 "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law.

204 "Licensing" includes a state agency process relating to the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

- 205 "Party" means the agency taking action, the person against whom the action is directed, and any other person named as a party or permitted to intervene or to participate in the agency proceedings.
- 206 "Policy Statement" means a written description of the current approach of an agency, entitled a policy statement by the agency head or its designee, to implementation of a statute or other provision of law, of a court decision, or of an agency order, including, where appropriate, the agency's current practice, procedure, or method of action based upon that approach. A policy statement is advisory only, and does not bind any person outside the agency.
- 207 "Code" means the *Mississippi Administrative Code*.
- 208 "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.
- 209 "Entry" of an order means the signing of the order by all persons who are to sign the order, as an official act indicating that the order is to be effective.
- 210 "Fee" means a charge prescribed by an agency for an inspection or for obtaining a license.
- 211 "Filing" of a document that is required to be filed with an agency means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head.
- 212 "Mail" or "send," for purposes of any notice relating to rule making or policy or interpretive statements, means regular mail or electronic distribution.
- 213 "Presiding officer" means the agency head, member of the agency head, administrative law judge, hearing officer, or any other person who presides in a hearing, contested case, adjudication or other agency proceeding.
- 214 "Bulletin" means the *Mississippi Administrative Bulletin*.
- 215 "Service," except as otherwise provided in this chapter, means posting in the United States mail, properly addressed, postage prepaid, or personal service. Service by mail is complete upon deposit in the United States mail. Agencies may, by rule, authorize service by electronic telefacsimile transmission, where copies are mailed simultaneously, or by commercial parcel delivery company.
- 216 "Contested Case" means an adjudication or other proceeding, including but not restricted to rate-making, price-fixing, and licensing in which the legal rights, duties, or privileges of a party are required to be determined by an agency after an opportunity for a hearing, other than disciplinary proceedings or agency action involving only employees of the agency.
- 217 (Reserved)

## Chapter 03 Administrative Code

### Purpose

- 100 This chapter provides for the compilation, indexing and publication of the Mississippi Administrative Code as required by Section 25-43-2.101(2) of the Administrative Procedures Law.
- 101 The title of the official legal codification published pursuant to Section 25-43-2.101(5) shall be The *Mississippi Administrative Code*.
- 102 The *Mississippi Administrative Code* shall be published at least annually commencing beginning in December 31, 2006 or as soon as individual Titles may be compiled.
- 103 The *Mississippi Administrative Code* is an electronic publication and is published on the Mississippi Secretary of State's website: [www.sos.state.ms.us](http://www.sos.state.ms.us).
- 104 The Code is supplemented no less than monthly by the publication of the *Mississippi Administrative Bulletin*.
- 105 Each agency shall submit a complete compilation of its rules and regulations to the Secretary of State no later than June 30, 2006. Compilations shall be formatted in accordance with the rules in this Part.
- 106 Without prejudice to any other form of citation, The *Mississippi Administrative Code* may be cited by Title, Part Chapter and Section. For example this section is cited as Title 01, Part I, Chapter 03 Section 106 of the *Mississippi Administrative Code*. The recommended short form of citation is: MISS ADMIN CODE. For example this section may be cited as 01.I.03 MISS ADMIN CODE 106.
- 107 The *Mississippi Administrative Code* is arranged as follows:
1. Titles, identified by Arabic numerals which are subdivided as follows:
    - a. Parts, identified by Roman numerals with a new sequence of numbers beginning in each Title;
    - b. Subparts, identified by Arabic numerals with a new sequence of numbers beginning in each Part;
    - c. Chapters, identified by Arabic numerals with a new sequence of numbers beginning in each subpart;
    - d. Sections, identified with a three digit Arabic numeral with a new sequence of numbers beginning with each Chapter.
  2. Sections of the *Mississippi Administrative Code* are subdivided as follows:
    - a. Subsections, identified by the Section number plus a decimal consisting of a two digit Arabic numeral with a new sequence beginning with each Section;
    - b. Paragraphs, identified by Arabic numerals, with a new sequence of numbers beginning in each Section;

- c. Subparagraphs, identified by lower case letters with a new sequence of letters beginning in each Paragraph;
    - d. Clauses, identified by lower case Roman numerals with a new sequence of numbers beginning in each Subparagraph.
  - 3. It should be noted that not every Title will be subdivided into Parts, but every Title will have at least one Chapter; not every Chapter will have a Subchapter, but every Chapter will have at least one Section.
  - 4. Sections may stand alone or may be subdivided into either Subsections or Paragraphs or both
  - 5. (Reserved.)
- 108 Titles, Parts, Subparts, Chapters, will have a heading. Sections may have a heading. Headings will not govern, limit, modify, or in any manner affect the scope, meaning or intent of the provision of the *Mississippi Administrative Code*. These are merely a short explanation of the material contained in that unit and should be stated in as few words as possible.
- 109 Tenses, Gender and Number, except as otherwise stated in a unit of the Code, the present tense includes the past tense and the future tense; and the future tense includes the present tense; the masculine gender includes the feminine and the neuter, the feminine includes the masculine and neuter and the neuter includes the masculine and the feminine.
- 110 *Mississippi Administrative Code* is divided into Titles based on subject matter or agencies. Entire titles are devoted to large Agencies and agencies that promulgate large numbers of regulations. Smaller agencies and agencies that do not issue a large volume of rules are grouped into Titles based on subject matter or other similarities.
- 111 Index to Titles of the *Mississippi Administrative Code* (Reserved)
- 112 Reserved

## Chapter 04 Administrative Bulletin

- 100 The purpose of this chapter is to provide for the publication of the *Mississippi Administrative Bulletin* as required by Section 25-43-2.101(2) of the Mississippi Administrative Procedures Law.
- 101 The official legal title of the administrative bulletin published by the Secretary of State pursuant to the Administrative Procedures Law is the *Mississippi Administrative Bulletin*.
- 102 The *Mississippi Administrative Bulletin* is an electronic publication and is published on the Mississippi Secretary of State's website: [www.sos.state.ms.us](http://www.sos.state.ms.us).

- 103 The *Mississippi Administrative Bulletin* shall be published at least monthly commencing in July 2005.
- 104 Without prejudice to any other form of citation, The *Mississippi Administrative Bulletin* may be cited by volume and page number. For example Volume 1, Page 1 of the *Mississippi Administrative Bulletin*.(Month, Year) The recommended short form of citation is: V-01 MISS ADMIN BULLETIN P-01 (August, 2005).
- 105 The *Mississippi Administrative Bulletin* is arranged as follows:
1. Table of Contents arranged alphabetically by agency
  2. Notices of Proposed Rule Adoption
  3. Notices of Adoption of Temporary Rule
  4. Notices of Adoption of Final Rules
  5. Other Notices and Materials Designated by Law for Publication
- 106 The text of Federal Rules to be adopted by an agency may be incorporated by reference to the citation in the Code of Federal Regulations and/or the Federal Register.
1. Text incorporated in this manner should not be repeated in the regulation.
  2. Where the text of a Federal Rule is incorporated by reference, the agency shall provide information as to where the text of the rule so incorporated can be found and make the text available to the public upon request.
  3. Other Notices and Materials Designated by Law for Publication
- 107 Where an agency proposes or adopts as Rules, the standards or guidelines or portions thereof of any professional, trade or other association or entity, the agency may incorporate the standard or guideline by reference to a specific citation to the written standard or guideline.
1. Text incorporated in this manner should not be repeated in the regulation.
  2. Where the text of a professional trade or other association or entity is incorporated by reference, the agency shall provide information as to where the text of the rule so incorporated can be found and make the text available to the public upon request.
- 108 Reserved

## **Chapter 05 Rule Making Procedures**

- 100 This chapter outlines the specific requirements for agency documents submitted for publication in the *Mississippi Administrative Bulletin*.
- 101 Documents submitted to the Secretary of State's Office by the 15th day of the month will be published in the Bulletin issued for the following month.
- 102 The agency submitting a document for publication in the Mississippi Bulletin shall submit three copies of the document in three different formats to the

Secretary of State's Office. The Agency shall submit one copy of the document in each of the following three mediums:

1. electronic text file in Microsoft Word, plain text, or any other word processing text file readily convertible by Microsoft Word into a Microsoft Word document.
2. electronic image file in "pdf" or "tiff" format, and
3. paper

- 103 All documents submitted for publication shall be formatted as 8 1/2" x 11" page documents with 1 inch margins, single sided (non-duplex), without headers or footers. Page numbering shall be included only in the top right hand corner of the document on each page. Pages shall be numbered commencing after the cover memorandum, Notice Form, and the Concise Summary of Economic Impact Statement required by Sections 108 and 109 below. Additional formatting should not be included.
- 104 Paper documents submitted shall be unbound on 8 1/2" x 11" white paper.
- 105 The entire document, including forms required to be submitted with the filing, shall be typewritten using a 12 point New Times Roman font. All required signatures shall include the typewritten name and title of the person signing the document and the date. Handwritten submissions will be rejected and returned to the agency.
- 106 The entire document shall be single spaced and shall include one additional space between each subtitle, part, sub-part, chapter, sub-chapter, section or subsection.
- 107 Tables, graphs, charts, maps, pictures, and other non-text items shall not be embedded into electronic text files but should be submitted as separate documents (electronic files) appended to the filed document. Tables, graphs, charts, maps, pictures and other non-text items shall be submitted in black and white or gray.
- 108 The first page of each document submitted for publication shall consist of a completed:
1. Notice of Proposed Rule Adoption - SOS APA Form 001, or
  2. Notice of Rule Adoption--Final Rule - SOS APA Form 002, or
  3. Notice of Rule Adoption (Temporary Rule) - APA Form 003, and
  4. A cover memo detailing specific statutory or regulatory authority for the publication of the document in the *Mississippi Administrative Bulletin*.
  5. An Executive Summary shall be submitted where publication of a rule in hard copy is unduly cumbersome, expensive or otherwise inexpedient and knowledge of the rule is likely to be important to a small class of persons or where the rule exceeds fifty (50) typewritten pages as defined in Sections 104-106 above.
    - a. the Executive Summary of the Rule should detail the major points of the rule, and
    - b. advise the public where the text may be obtained at no more than the cost of reproduction.



- 109 Where required by the Administrative Procedures Law, the second page of each proposed rule shall consist of the Concise Summary of Economic Impact Statement - APA Form 004.
- 110 An optional cover memo providing any explanatory information about the filing and detailing specific statutory or regulatory authority for the publication of the document in the *Mississippi Administrative Bulletin*.
- 111 Amendments or changes to existing rules should include
1. The new proposed text of the rule, and
  2. The existing rule with the changes indicated using a strike through and underscore method. Text of the existing rule that is to be deleted should be lined out and new inserted text underscored.
  3. The agency's cover memorandum should state the reasons for any substantive change.
- 112 Where a specific rule is unduly cumbersome, expensive or otherwise inexpedient to reproduce it may be omitted from publication if it is likely to be important only to a small class of persons. The rule shall be made by the agency in a printed form at no more than the cost of reproduction. The Secretary of State may publish the Executive Summary of the Rule provided by the Agency in lieu of the text of the Rule.
- 113 (Reserved XML tagging)
- 114 (Reserved)

## **Chapter 06 Copyright**

### Purpose

- 100 The purpose of this Chapter is to retain a copyright in the *Mississippi Administrative Code* and *Mississippi Administrative Bulletin* in accordance with the Administrative Procedures Law, Section 25-43-2.101 of the Mississippi Code of 1972.

## Copyright and Usage

- 101 All information published in the *Mississippi Administrative Code* or the *Mississippi Administrative Bulletin*, which includes but is not limited to, cross references, tables of cases, notes of decisions, tables of contents, indices, source notes, numerical lists, and codification guides, other than the actual text of rules or regulations may be reproduced only with the written consent of the Secretary of State. Any such information which appears on the same leaf or page with the text of any rule or regulation, however, may be incidentally reproduced in the connection with the reproduction of such rule or regulation, if such use is for private use and not for resale. There shall be no other restrictions on the reproduction of information published pursuant to this Part, and the State hereby consents to any such reproduction.

## Public Access to Rules

- 102 The *Mississippi Administrative Code* and the *Mississippi Administrative Bulletin* may be accessed without charge over the internet at [www.sos.state.ms.us](http://www.sos.state.ms.us) . Photocopies of specific rules or regulations are available from the issuing agency or the Secretary of State. The requestor will be charged statutory or other reasonable fees for photocopies.

- 103 (Reserved)

## **Chapter 07 Notice--Effect of Publication**

### Constructive Notice

- 101 Unless otherwise specifically provided by statute the publication under this Part of any document required or authorized to be so published shall, except in cases where notice by publication is insufficient in law, be sufficient to give notice of the contents of such documents to any person subject thereto or affected thereby.

### Judicial Notice

- 102 The contents of the *Mississippi Administrative Code* and the *Mississippi Administrative Bulletin* shall be given judicial notice to the extent provided by law.
- 103 (Reserved)

## Chapter 08 Appendix of Rule Making Forms

- 100 This Chapter contains forms prescribed by the Secretary of State for use by agencies in submitting rules for publication in the *Mississippi Administrative Bulletin*.
- 101 Notice of Proposed Rule Adoption, SOS Form APA 001 is the required coversheet for all proposed rules.
- 102 Notice of Final Rule, SOS Form APA 002 is the required coversheet for all final rules.
- 103 Notice of Temporary Rule, SOS Form APA 003 is the required coversheet for all temporary rules.
- 104 Concise Summary of Economic Impact Statement, SOS APA Form 004.
- 105 Notice of Withdrawal of Proposed Rule, SOS APA Form 005
- 106 Reserved