

Title 1: Administrative Law

Chapter 1: Responsibilities of the Secretary of State under the Administrative Procedures Act

Rule 1.1 Repeal of Prior Rules. Upon their effective date, these rules and regulations supersede and repeal all previous rules and regulations promulgated under the Administrative Procedures Act and adopted as Title 01 – Administrative Law and Secretary of State; Part I – Administrative Rules and Part II – Model Rules for Use by All Agencies.

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Rule 1.2 Administrative Procedures Act Requirements. The Mississippi Administrative Procedures Act requires the Secretary of State to:

- A. Publish an Administrative Bulletin
- B. Compile an Administrative Code
- C. Issue certain standards for the filing of administrative rules with the Secretary of State's Office, and
- D. Issue model administrative rules for use by other state agencies.

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Chapter 2: Compilation, Indexing, and Publication of the Mississippi Administrative Bulletin

Rule 2.1 Mississippi Administrative Bulletin. The title of the official legal bulletin published by the Secretary of State pursuant to the Administrative Procedures Act is the Mississippi Administrative Bulletin. The short form of the title for citation purposes shall be Miss. Admin. Bull. The Mississippi Administrative Bulletin is an electronic publication and is published via the Mississippi Secretary of State's website: www.sos.ms.gov. The Mississippi Administrative Bulletin is updated as needed within two (2) business days of the filing of notice of a proposed rule adoption, notice of adoption of an emergency rule, or notice of adoption of final rule.

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Rule 2.2 Emergency Rules. According to Section 25-43-3.108 of the Administrative Procedures Act, an emergency rule may be adopted when an agency finds that an imminent peril to the public health, safety or welfare requires adoption of the rule in a shorter period of time than is required by Section 25-43-3.103. These rules may be effective for a period of not longer than one hundred twenty (120) days and may be renewed for another ninety (90) day period. Adoption of an identical rule under the normal process is not precluded.

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Rule 2.3 Organization of the Mississippi Administrative Bulletin. The public can access all notices, proposed rules offered for comment, and rules that have been adopted to be transmitted to the Mississippi Administrative Code upon the effective date through the Mississippi Administrative Bulletin published on the Secretary of State's website at www.sos.ms.gov. By knowing the issuing agency for any rule of interest, a summary of the rule and links to both the filing notice and the full text of the rule can be viewed.

The Mississippi Administrative Bulletin and The Mississippi Administrative Code are organized by the Secretary of State's Office into Titles that either correspond to primary state agencies or to broad subject matters. Prior to filing a proposed rule or rules, agencies assign consecutive page numbers beginning with the number one (1) on the first page of the proposed rule(s) and continuing consecutively to the end of the document, including all pages except the notice page. The month and year of filing will follow the page number to complete a full citation to a rule published in the Bulletin. The structure of the citation is as follows:

1. Citation –

[title] Mississippi Administrative Bulletin [page number] ([month] – [year]).

- A. [title] represents the agency designation or broad subject matter title within which the regulation is organized, as assigned by the Secretary of State.
- B. [page number(s)] represents the page number on which the rule or supporting material relating to the rule is found in the Bulletin. The submitting agency assigns page numbers in accordance with Chapter 4 Rule 4.9 of this Title.
- C. [month] represents the month in which a proposed rule adoption, a final rule adoption, or a temporary rule adoption is filed with the Secretary of State's Office. For citation purposes, months shall be represented by their two digit counterparts. For example: May would be cited as 05.
- D. [year] represents the year in which a proposed rule adoption, a final rule adoption, or a temporary rule adoption is filed with the Secretary of State's Office. For citation purposes, the year will include all four digits. For example: 2009.

- 1) An example: If the Secretary of State's Office filed a proposed rule in June 2009, a citation to the second page of the document would be:

34 Mississippi Administrative Bulletin 2 (06-2009).

- 2) A short citation to the second page of the same document would be:

34 Miss. Admin. Bull. 2 (06-2009).

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Rule 2.4 Right to Organize, Reject, and Edit. The Secretary of State reserves the right to organize, reject, and edit rules for publication and codification as provided in Section 25-43-2.101(4) of the Administrative Procedures Act. Minor errors pertaining to spelling, punctuation, etc., that in no way impact the substance or the content of a filing may be corrected by the Secretary of State's Office prior to or following publication. More substantive errors, such as omitted text, will be returned to the submitting agency for correction and re-submission. The re-submission of a corrected or an amended filing that does not impact content or substance relates back to the date of original filing for the purpose of computing any required time under the Administrative Procedures Act. The Secretary of State reserves the right to reject a filing or to cancel a filing for any submission that is out of compliance with the format prescribed by these rules if the submission would disrupt the uniform organization of the Bulletin or the Code.

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Rule 2.5 Transfer of Adopted Rules to the Mississippi Administrative Code. Following the effective date of a rule, such rule will be transferred from the Mississippi Administrative Bulletin to the Mississippi Administrative Code. All Administrative Bulletin publications will be accessible on the Secretary of State's website for up to five (5) years. Beyond a five (5) year period, the Secretary of State reserves the right to maintain an archive in any practical medium and to charge a copy and retrieval fee consistent with the public records request policy established by the Secretary of State's Office.

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Chapter 3: Compilation, Indexing, and Publication of the Mississippi Administrative Code

Rule 3.1 Mississippi Administrative Code Publication. The title of the official legal codification published pursuant to Section 25-43-2.101(5) shall be The Mississippi Administrative Code. The short form of the title for citation purposes shall be Miss. Admin. Code. The Mississippi Administrative Code is an electronic publication and is published on the Mississippi Secretary of State's website: www.sos.ms.gov. The Code is supplemented as needed within two (2) business days of the effective date of final adopted rules.

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Rule 3.2 Submission of Formatted Compilations Required. Each agency shall submit a complete and current compilation of its rules and regulations to the Secretary of State no later than December 31, 2010. Compilations shall be formatted in accordance with these rules unless otherwise approved by the Secretary of State's Office. Any rules submitted to the Secretary of State that are not formatted in accordance with these rules may be rejected pursuant to Rule 2.4 of this Title.

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Rule 3.3 Organization of the Mississippi Administrative Code.

- A. The Mississippi Administrative Code is organized into titles which either correspond to primary state agencies or to broad subject matters. Titles are determined by the Secretary of State's Office. Each agency's regulations are organized into either one title or within a range of chapters contained in a title. Where there is more than one agency in a title, the Secretary of State assigns a range of chapters within the title for each agency.
- B. Titles and the chapter numbers that are assigned by the Secretary of State shall be compiled in a document called "Index of Titles of the Mississippi Administrative Code" which will be posted on the Secretary of State's website with the Bulletin and the Code. The Index of Titles of the Mississippi Administrative Code shall be updated by the Secretary of State for publication on an as needed basis without the necessity of engaging in rulemaking procedures pursuant to the Administrative Procedures Act.
- C. Typically an agency will assign a separate chapter designation to all subject/topic areas of responsibility the agency administers. For example, within the Secretary of State's Office, chapter designations are needed for sixteenth section lands, elections, charities, securities, etc. These may or may not correspond to the office, branch, or division within an agency since each office, branch, or division may administer one or more unrelated subjects or multiple related subjects. Each subject/topic of an agency's regulatory responsibility should have its own chapter number. Agencies grouped into shared title numbers will be assigned a sufficient range of chapter numbers to organize their rules in accordance with these rules. Agencies should refer to the Index of Titles described above to obtain specific designations. Agencies are encouraged, though not required, to reserve some chapter numbers for future use.
- D. Each rule is identified with its own Mississippi Administrative Code citation format. The structure of the citation is as follows:

1) Citation –

[title] Mississippi Administrative Code Rule [number].

- a. [title] represents the agency designation or broad subject matter title within which the regulation is organized.
- b. [number] represents the chapter and rule number within the chapter. A chapter is a collection of rules within a subject/topic area of responsibility. A rule is the basic unit of the Mississippi Administrative Code. The rule number will reflect the chapter and the rule within the chapter, as the numbers before and after the decimal, respectively. For example, Rule 44 contained within chapter 300 would be numbered 300.44.

- i. An example: If the Secretary of State filed Rule number 2 in chapter 30, the citation would be:

34 Mississippi Administrative Code Rule 30.2.

ii. The short citation would be :

34 Miss. Admin. Code R. 30.2.

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Chapter 4: Rule Making Procedures

Rule 4.1 Mediums of Rule Submission. The agency submitting a document for publication in the Mississippi Administrative Bulletin **shall** submit a copy of the document to the Secretary of State's Office in **two** (2) electronic formats: (1) an electronic image file in "pdf" or "tiff" format; and, (2) an 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. **Submission of a paper copy is not required.** For submissions that do not exceed five (5) megabytes (MB), the agency may use the following email address for filing with the Secretary of State's Office: adminrules@sos.ms.gov.

For submissions that exceed five (5) MB, the submission **must** be made through readily usable electronic storage media such as a compact disc. Further, both the storage media and any outer cover for the media must contain the following information: agency name, contact person, phone number, and email address. The submission must be delivered to the following address:

Secretary of State's Office
Attn: Regulation and Enforcement Division
700 North Street
Jackson, MS 39205

The failure to include both electronic formats and the external information may result in the submission being rejected for filing. The Secretary of State reserves the right to request a paper copy of any submission and the right to reject submissions stored on outmoded or out-of-date storage media.

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Rule 4.2 Date of Submission. Any submission received by email or electronic storage media after 5:00 pm on a weekday, any weekend, official holiday, or on any day the Secretary of State's Office is closed will be considered filed on the following business day that the Secretary of State's Office is open for business.

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Rule 4.3 Margins and Font. All documents submitted for publication shall be formatted with 1 inch margins, single sided pages, without headers or footers. The entire document, including forms required to be submitted with the filing, shall be typewritten using a 12 point Times New

Roman font. The entire document shall be single spaced with double spaces between rules and between sources of authority for the rules.

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Rule 4.4 Authorized Forms. The following forms are required by the Secretary of State for use by agencies in submitting rules for publication in the Mississippi Administrative Bulletin:

- A. Administrative Procedures Notice Filing, SOS APA Form 001.
- B. Concise Summary of Economic Impact Statement, SOS APA Form 002.
- C. Notice of Withdrawal of Proposed Rule, SOS APA Form 003.

All forms are available at the Secretary of State's website: www.sos.ms.gov. Copies of forms may also be obtained from the Secretary of State's Office for the price of reproduction.

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Rule 4.5 Administrative Procedures Filing Notice. The first page of each document submitted for publication shall consist of a completed Administrative Procedures Notice Filing, SOS APA Form 001. This form must be included on the electronic storage media or in the email submission in both formats (pdf and editable formats) as the first page of a file that contains the rule or rules being submitted for publication in the Bulletin. The pdf electronic image must include the required signature of the person authorized to file rules for the submitting agency along with the printed or typewritten name and title of the person signing the document and date. For the editable format, it is sufficient for a signature to be represented with an “/s/”.

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Rule 4.6 Concise Summary of Economic Impact Statement. Where required by the Administrative Procedures Act, the second page of each proposed rule shall consist of the Concise Summary of Economic Impact Statement - APA Form 002. This form must be included on the electronic storage media or in the email submission in both formats (pdf and editable formats) as the second page of a file that contains the rule or rules being filed for publication in the Bulletin. The pdf electronic image must include the required signature of the person authorized to file rules for the submitting agency along with the printed or typewritten name and title of the person signing the document and the date. For the editable format, it is sufficient for a signature to be represented with an “/s/”.

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Rule 4.7 Source of Authority Requirements. At the end of each submitted rule the submitting agency must identify the statutory authority (the “source”) for the adoption, amendment, or repeal of the submitted rule. The source of authority consists of a citation to the statute conferring the authority to promulgate the rule. The inclusion of the source information following the rule is for reference only and shall not be considered as substantive rule text. An

example of the source of authority for the promulgation of this rule as it must appear for publication is as follows: ‘Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).’

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Rule 4.8 Organization of Rule Submissions. When agencies submit rules to the Secretary of State’s Office for filing as either proposed rules or for final adoption, the organization and format described below must be followed unless otherwise approved by the Secretary of State's Office.

- A. Proposed amendments to existing rules must include:
 - 1. Notice Filing (SOS APA Form 001).
 - 2. If required, Summary of Economic Impact Statement (SOS APA Form 002).
 - 3. The text of the rule if the proposed amended language is adopted.
 - 4. A variance consisting of the existing rule with the proposed changes and amendments indicated using a ~~strike through~~ and underscore method. Text of the existing rule that is to be deleted should be struck through (not redacted) and new inserted text should be underscored.

- B. Final adopted amendments or changes to existing rules must include:
 - 1. Notice Filing (SOS APA Form 001).
 - 2. The final text of the rule as it will appear for publication in the Administrative Code.
 - 3. A variance consisting of the text as initially filed with the Secretary of State as a proposed amendment compared to the final adopted text with the changes indicated using a ~~strike through~~ and underscore method. Text that is to be deleted should be struck through (not redacted) and new inserted text should be underscored.

- C. For proposed new rules agencies must include the following:
 - 1. Notice Filing (SOS APA Form 001).
 - 2. If required, Summary of Economic Impact Statement (SOS APA Form 002).
 - 3. Text of the proposed new rule.

- D. For final adoption of new rules, agencies must include the following:
 - 1. Notice Filing (SOS APA Form 001).
 - 2. The final text of the new rule as it will appear for publication in the Administrative Code.
 - 3. A variance consisting of the text as initially filed with the Secretary of State as a proposed new rule compared to the final adopted text with the changes indicated using a ~~strike through~~ and underscore method. Text that should indicate deletions must be struck through (not redacted) and new inserted text should be underscored.

- E. For a proposed repeal of an existing rule, agencies must include the following:
 - 1. Notice Filing (SOS APA Form 001).
 - 2. If required, Summary of Economic Impact Statement (SOS APA Form 002).

3. The rule citation, followed by the title or caption, if appropriate, and the word “REPEAL” in all caps following the rule number and title.
4. A variance consisting of the existing rule proposed to be repealed with all text indicating deletion using a ~~strike through~~ method. Text of the existing rule that is to be deleted should be struck through (not redacted) in a way that enables the public to clearly read the full text of the rule the agency proposes to repeal.

F. For final adoption of a rule repeal, agencies must include the following:

1. Notice Filing (SOS APA Form 001).
2. The rule citation, followed by the title or caption, if appropriate, followed by the word “REPEALED” in all caps and the effective date of the repeal. An example follows:

1 Mississippi Administrative Code Rule 4.8. Organization of Rule Submissions.
REPEALED. Effective mm/dd/yyyy.

3. If the agency repeals the entire text of an existing rule, no variance as described in paragraph E.4 of this rule on final adoption is required. However, if an agency does not repeal the entire text, the new rule is presented for final adoption as an amendment to an existing rule under paragraph B of this rule. The text of the rule as it will appear for publication in the Administrative Code must be filed. The variance should indicate the text that is to be retained without mark-up. Text that is to be repealed as proposed should be struck through (not redacted).

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Rule 4.9 Pagination Requirements. The submitting agency must include a page number at the bottom of each page beginning with the first page of rule text (not the filing notice or the Summary of Economic Impact Statement) and continuing without interruption throughout the entire submission. This includes any variance text that immediately follows. Variance text is a separate copy of a rule or set of rules that is being changed that reflects the changes indicated using a ~~strike through~~ and underscore method. **Do not re-set the pagination to page 1 for the first page of the variance text.** Consecutive, uninterrupted pagination is needed to refer to differences between existing rule text and proposed rule text in written communication. For example, the Secretary of State’s Office decides to change Rules 1 – 5 of Chapter 30. The proposed text for these rules is ten (10) pages long. The variance text is fifteen (15) pages long. The Secretary of State’s Office would number this submission from page 1 through page 25 consecutively.

Only final, effective rules are published in the Administrative Code. The variance text is only published in the Administrative Bulletin for the public’s benefit for comparative purposes.

Page numbers should appear at the bottom center of the page. Do not paginate the filing notice page (SOS APA Form 1) or the Summary of Economic Impact Statement, if filed (SOS APA Form 002).

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Chapter 5: Bulletin and Code Access and Notice--Effect of Publication

Rule 5.1 Bulletin and Code Access. The Mississippi Administrative Bulletin and the Mississippi Administrative Code may be accessed without charge over the internet at www.sos.ms.gov. Photocopies of specific rules or regulations are available from the issuing agency or the Secretary of State. The requestor may be charged statutory or other reasonable fees for photocopies.

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Rule 5.2 Notice of Administrative Procedures Act Rules. Unless otherwise specifically provided by statute, the publication described herein, except in cases where notice by publication is insufficient in law, shall be sufficient to give notice of the contents of such documents to any person subject thereto or affected thereby.

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Rule 5.3 Judicial Notice. The contents of the Mississippi Administrative Bulletin and the Mississippi Administrative Code shall be given judicial notice to the extent provided by law.

Source: *Miss. Code Ann.* § 25-43-2.101 (Rev. 2006).

Chapter 6: Applicability and Relation to Other Law

Rule 6.1 Statutory Conflict. Specific statutory provisions which govern an agency's rules or related proceedings and which are in conflict with any of these rules shall continue to apply to rules and proceedings of any such agency to the extent of such conflict only. In cases in which an agency's rule formatting or structure is dictated by such conflicting statutory provisions, the Secretary of State may waive formatting requirements to accommodate such agency.

Source: *Miss. Code Ann.* § 25-43-1.103 (Rev. 2006).

Rule 6.2 Conflict with any law. These rules and the statutes from which they are promulgated shall not be construed to amend, repeal, or supersede the provisions of any other law; and, to the extent that the provisions of any other law conflict or are inconsistent with the provisions of these rules and the statutes from which they are promulgated, the provisions of such other law shall govern and control.

Source: *Miss. Code Ann.* § 25-43-1.103 (Rev. 2006).

Rule 6.3 Effective Date. These rules and the statutes from which they are promulgated do not relieve an agency from compliance with any provision of law requiring that some or all of its rules be approved by other designated officials or bodies before they become effective.

Source: *Miss. Code Ann.* § 25-43-3.113 (Rev. 2006).

Chapter 7: Rulemaking Oral Proceedings [Model]

Rule 7.1 Model Rules. This chapter consists of model rules for oral proceedings held to provide the public an opportunity to comment on submissions made under the Administrative Procedures Act and the Rules in this Title. 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 7.2 Application of Chapter. [Model] This chapter applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations or written input on proposed new rules, amendments to rules, and proposed repeal of existing rules before the [Agency] pursuant to the Administrative Procedures Act.

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

Rule 7.3 Request for Oral Proceeding. [Model] When a political subdivision, an agency, or a citizen requests an oral proceeding in regards to a proposed rule adoption, the requestor must submit a printed, typewritten, or legibly handwritten request.

- A. Each request must be submitted on 8-1/2" x 11" white paper.
- B. The request may be in the form of a letter addressed to the [Agency] or in the form of a pleading as if filed with a court.
- C. Each request must include the full name, telephone numbers, and mailing address of the requestor(s).
- D. 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.

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

Rule 7.4 Notice of Oral Proceeding. [Model] Notice of the date, time, and place of all oral proceedings shall be filed with the Secretary of State's Office for publication in the Administrative Bulletin. The agency providing the notice shall provide notice of oral proceedings to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of the notice with the Secretary of State. The Agency Head, or designee who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

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

Rule 7.5 Public Participation Guidelines. [Model] Public participation shall be permitted at oral proceedings in accordance with the following:

- A. At an oral proceeding on a proposed rule, persons may make statements and present documentary and physical submissions concerning the proposed rule.
- B. Persons wishing to make oral presentations at such a proceeding shall notify the [Agency] at least three business days 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 contacted the [Agency] prior to the proceeding.
- 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 presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint 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 presentations are encouraged to avoid restating matters that have already been submitted in writing. Written materials may, however, be submitted at the oral proceeding.
- F. Where time permits and to facilitate the exchange of information, the presiding officer 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. No participant shall be required to answer any question.

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

Rule 7.6 Submissions and Records. [Model] Physical and Documentary Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the [Agency], part of the rulemaking record, and are subject to the [Agency's] public records request procedure. The [Agency] may record oral proceedings by stenographic or electronic means.

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

Chapter 8: Declaratory Opinions [Model]

Rule 8.1 Model Rules. This chapter consists of model rules addressing the public's request for 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 8.2 Application of Chapter. [Model] This chapter sets forth the [Agency'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 [Agency's] procedures regarding the disposition of requests as required by Mississippi Code § 25-43-2.103.

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

Rule 8.3 Scope of Declaratory Opinions. [Model] The [Agency] will issue declaratory opinions regarding the applicability to specified facts of:

- A. a statute administered or enforceable by the [Agency],
- B. a rule promulgated by the [Agency], or
- C. an order issued by the [Agency].

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

Rule 8.4 Scope of Declaratory Opinion Request. [Model] A request must be limited to a single transaction or occurrence.

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

Rule 8.5 How to Submit Requests. [Model] 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.

- A. Each request must be submitted on 8-1/2" x 11" white paper.
- B. The request may be in the form of a letter addressed to the [Agency] or in the form of a pleading as if filed with a court.
- C. Each request must include the full name, telephone numbers, and mailing address of the requestor(s).
- D. 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.
- E. 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 8.6 Signature Attestation. [Model] 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 8.7 Request Content Requirement. [Model] Each request must contain the following:

- A. A clear identification of the statute, rule, or order at issue;
- B. The question for the declaratory opinion;
- C. A clear and concise statement of all facts relevant to the question presented;
- D. 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.
- E. 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 8.8 Reasons for Refusal of Declaratory Opinion Request. [Model] The [Agency] 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 [Agency];
- B. Lack of clarity concerning the question presented;
- C. 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;
- D. 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;
- E. The facts presented in the request are not sufficient to answer the question presented;
- F. The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
- G. 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;
- H. No controversy exists or is certain to arise which raises a question concerning the application of the statute, rule, or order;
- I. The question presented by the request concerns the legal validity of a statute, rule, or order;

- J. 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;
- K. No clear answer is determinable;
- L. The question presented by the request involves the application of a criminal statute or sets forth facts which may constitute a crime;
- M. The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- N. The question is currently the subject of an Attorney General's opinion request;
- O. The question has been answered by an Attorney General's opinion;
- P. One or more requestors have standing to seek an Attorney General's opinion on the proffered question;
- Q. 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
- R. 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, or certificate or other approval may be determined.

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

Rule 8.9 Agency Response. [Model] Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the [Agency] 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.

The forty-five (45) day period shall begin on the first business day on or after which the request is received by the [Agency].

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

Rule 8.10 Availability of Declaratory Opinions and Requests for Opinions. [Model] 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).

~~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.~~

~~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)~~

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.~~
- ~~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. 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~~

Part II – Model Rules for use by all Agencies

Chapter 01 Purpose of this Part

- ~~100 — The purpose of this part is to establish model rules of procedure on common general functions for use by agencies in accordance with the Administrative Procedures Law.~~
- ~~101 — An agency electing to adopt a model rule shall comply with the terms of the Administrative Procedures Law.~~
- ~~102 — A model rule may be adopted in its entirety or in part.~~
- ~~103 — An agency adopting a model rule in its entirety may use the incorporation by reference method.~~
- ~~104 — (Reserved)~~

Chapter 02 Model Rule on Requests for Information (Reserved)

Chapter 03 Model Rule on Rulemaking Oral Proceedings

Scope

~~101 — 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 [Agency] pursuant to the Administrative Procedures Law.~~

When an Oral Proceeding will be Scheduled on a Proposed Rule

~~102 — Where an oral proceeding has not previously been held or scheduled, the [Agency] 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.~~

Format of Request

~~103.01 — 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).~~

~~103.02 — The request may be in the form of a letter addressed to the [Agency] or as a pleading filed with a court.~~

~~103.03 — Each request must include the full name, telephone number, and mailing address of the requestor(s).~~

~~103.04 — 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.~~

Notification of Oral Proceeding

~~104 — 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.~~

Presiding Officer

~~105 — The Agency Head or designee, who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.~~

Public Presentations and Participation

~~106.00 — Public participation shall be permitted at oral proceedings in accordance with the following sections.~~

- ~~106.01~~ 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.
- ~~106.02~~ Persons wishing to make oral presentations at such a proceeding shall notify the [Agency] at least three business days 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 [Agency].
- ~~106.03~~ 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.
- ~~106.04~~ 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.
- ~~106.05~~ Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing. Written materials may, however, may be submitted at the oral proceeding.
- ~~106.06~~ 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 partisan's time where the orderly conduct of the proceeding so requires.

Conduct of Oral Proceeding

Presiding Officer

- ~~107.01~~ 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 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 Department for the proposed rule; (ii) call on those individuals who have contacted the Department about speaking on or against the proposed rule; (iii) allow for rebuttal statements following all participants' comments; (iv) adjourn the proceeding.

Questions

107.02 — 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.

Physical and Documentary Submissions

107.03 — 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 [Agency], part of the rulemaking record, and are subject to the [Agency's] public records request procedure.

Recording

107.04 — The [Agency] may record oral proceedings by stenographic or electronic means.

Chapter 04 Model Rule on Requests for Declaratory Opinions

Scope of Rules

100 — These sections set forth the [Agency's] rules governing the form and content of requests for declaratory opinions and the [Agency's] procedures regarding the requests as required by Mississippi Code § 25-43-2.103.

Persons Who May Request Declaratory Opinions

101.01 — Any person with a substantial interest in the subject matter may make a request to the [Agency] for a declaratory opinion by following the specified procedures.

101.02 — "Substantial interest in the subject matter" as used in this chapter means: that a party is directly affected by the [Agency's] administration of the laws within the [Agency's] primary jurisdiction.

101.03 — "Primary jurisdiction of the Agency" as used in this chapter means the [Agency] has a constitutional or statutory grant of authority in the subject matter at issue.

~~101.04 (Reserved)~~

Subjects Which May Be Addressed In Declaratory Opinions

- ~~201 The [Agency] will issue declaratory opinions regarding the applicability to specified facts of:~~
- ~~1. a statute administered or enforceable by the [Agency],~~
 - ~~2. a rule promulgated by the [Agency], or~~
 - ~~3. an order issued by the [Agency].~~

Circumstances In which Declaratory Opinions Will Not Be Issued

- ~~301 The [Agency] 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:~~
- ~~1. the matter is outside the primary jurisdiction of the [Agency];~~
 - ~~2. lack of clarity concerning the question presented;~~
 - ~~3. 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;~~
 - ~~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 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;~~
 - ~~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; or,~~
 - ~~15. the question has been answered by an Attorney General's opinion.~~

~~302 — A declaratory opinion will not be issued where 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.~~

~~303 — A declaratory opinion will not be issued if it 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.~~

~~304 — Where a request for a declaratory opinion involves a question of law, the [Agency] may refer the matter to the State Attorney General.~~

~~305 — A declaratory opinion will not be issued where 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, or certificate or other approval may be determined.~~

Form of the Request for a Declaratory Opinion

~~401 — Written Requests Required. Each request must be printed, typewritten or in legible handwriting. Each request must be submitted on standard business letter size paper (8 1/2" by 11"). Requests may be in the form of a letter addressed to the [Agency] or in the form of a pleading as might be addressed to a court.~~

~~402 — Where to Send Requests. All requests must be mailed or delivered to the [Agency]. The request and its envelope shall clearly state that it is a request for a declaratory opinion. Oral and telephone requests are unacceptable.~~

~~403 — 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.~~

~~404 — Single transaction. A request must be limited to a single transaction or occurrence.~~

~~405 — Question Presented. Each request must contain the following:~~

- ~~1. a clear identification of the statute or rule 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 identify of 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;~~
- ~~5. a statement sufficient to show that the person seeking relief has a substantial interest in the subject matter.~~

~~406 — The terms of the proposed opinion suggested by the requestor may be submitted with the request or may be requested by the agency;~~

~~407 — Memorandum of Authorities. A request may contain an argument by the requestor in support of the terms of the proposed opinion suggested by the requestor. The argument may be submitted in the form of a memorandum of authorities, containing a full discussion of the reasons and any legal authorities, in support of such position of the requestor. The agency may request that the argument and memorandum of authorities be submitted by any interested party.~~

Time for Agency's Response

~~501 Agency'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 [Agency] shall, in writing:~~

- ~~1. issue an opinion declaring the applicability of the specified statute, rule, or order to the specified circumstances;~~
- ~~2. decline to issue a declaratory opinion, stating the reasons for its action; or~~
- ~~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.~~

~~502. When Period Begins. The forty five (45) day period shall begin on the first State of Mississippi business day that the request is received by the [Agency].~~

~~503 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 [Agency] 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.~~

Procedure After Request for Declaratory Opinion Received

~~601 Notice by Agency. The [Agency] may give notice to any person that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from persons other than the requestor.~~

~~602 Notice by Requestor. The requestor, or his attorney, shall append to the request for a declaratory opinion a listing of all persons, with addresses, known to the requestor who may have an interest in the declaratory opinion sought to be issued, and shall mail a copy of the request to all such persons. The requestor or his attorney shall certify that a copy of the request was mailed to all such persons together with this statement: "Should you wish to participate in the proceedings of this request, or receive notice of such proceedings or the declaratory opinion issued as a result of this request, you should contact the [Agency] within twenty days of the date of this request."~~

Hearings at the Discretion of the Agency

~~701 — Provision for Hearing. If the [Agency] in its sole discretion deems a hearing necessary or helpful in determining any issue concerning a request for a declaratory opinion, the [Agency] may schedule such a hearing. Notice of the hearing shall be given to all interested parties unless waived. Notice mailed by first class mail 7 calendar days prior to the hearing shall be deemed appropriate.~~

~~702 — Proceedings at the Hearing. The procedure for conducting a hearing, including but not limited to the manner of presentation, the time for presentation, and whether and how evidence may be taken, shall be within the discretion of the [Agency].~~

~~703 — Persons Appearing at the Hearing. The [Agency] shall allow the requestor to participate in any hearing. The [Agency] may allow any other persons or entities to participate in the hearing.~~

Public Availability of Requests and Declaratory Opinions.

~~801 — 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 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.~~

~~Chapter 05 Rules of Practice for Formal and Informal Proceedings Available to the Public (Reserved)~~

~~Chapter 06 (Reserved)~~