



**Office of the State Auditor**  
**STACEY E. PICKERING**  
A U D I T O R

**Title 4: Auditor**

**Part 1: Organizational Rules**

**Part 1 Chapter 1: Regulation Regarding Organization and Method of Operation  
Including Public Access to Information**

*Rule 1.1 Authority.* This regulation is adopted as a rule to conform to the requirements of Section 25-43-2.104 of the Mississippi Code of 1972, Annotated as amended, regarding agency organization, method of operation, and where/how the public may obtain information.

Source: *Miss. Code Ann.* § 25-43-2.104 (Rev. 2006).

*Rule 1.2 Authority of the Office of the State Auditor.* The Mississippi Constitution in Section 134 creates the Office of the State Auditor whose specific powers derive from the Mississippi Code of 1972, as amended, including Section 7-7-211 which grants specific duties and powers related to prescribing systems of accounting, budgeting, and financial reporting for public offices in Mississippi. It also enumerates other statutory responsibilities including study and analysis of existing public managerial policies and practices; pre-audit and post-audit functions; investigation of suspected fiscal violations; recovering misspent and stolen funds; and a variety of related duties and responsibilities.

(a) Organizational Structure.

The organizational structure of the Office of the State Auditor consists of the Auditor's Executive Support Staff and eight divisions.

The Auditor's Executive Support Staff assists in directing and supervising Office activities involving one or more the eight divisions. The Director of the Department of Audit coordinates and oversees this function, acting on behalf of the State Auditor when needed.

The Office of the State Auditor is housed in three (3) locations. The central office is in Jackson with satellite offices in Ellisville and Grenada.

Source: *Miss. Const.* art. IV, § 134; *Miss. Code Ann.* §§ 7-7-203, 7-7-211.

*Rule 1.3 Divisional Responsibilities.*

- (a) The duties of the **Administrative Services Division** include: responsibility for all personnel matters; processing of invoices, travel vouchers and purchase orders, as well as all activities related to procurement of equipment and supplies; billing of entities for services rendered; preparing and administering the agency's annual budget.
- (b) The **Financial and Compliance Audit Division**, the largest division in the agency, is divided into five sections: Education Audit Section, State Agency Audit Section, County Audit Section, Electronic Data Processing (EDP) Audit Section and Report Processing Section. This division is responsible for conducting and overseeing audits of public entities.
- (c) The **Average Daily Attendance Division** is responsible for monitoring school district compliance with the student information system requirements developed by the Mississippi Department of Education. In addition, it conducts public school fixed asset audits.
- (d) The **Information Technologies Division** is responsible for in-house design and installation of information systems. Its primary duty is to provide intra-agency technical support and training access related to the agency's information management activities.
- (e) The **Investigative Division** is responsible for the investigation of alleged or suspected violations of Mississippi law, including fraud and embezzlement, by public officials related to the purchase, sale or use of any supplies, services, equipment or other public property.
- (f) The **Performance Audit Division** conducts programmatic and performance audits and reviews to evaluate selected operations of government, making recommendations aimed at enhancing efficiency, effectiveness and economy in government.
- (j) The **Property Division** is responsible for maintaining a master inventory of fixed assets for state agencies and universities. It also conducts fixed asset audits for these public entities and for county governments as well.
- (h) The **Technical Assistance Division** is responsible for providing accounting and compliance assistance to state and local governments. It also conducts related training and is responsible for the design of uniform accounting systems for local governments.

Source: *Miss. Code Ann.* §§ 7-7-203, 7-7-211.

*Rule 1.4 Public Access Information.* The Office of the State Auditor may be contacted to participate in formal and informal proceedings and related rule-making matters by mail, e-mail, or telephone, or in person during regular business hours utilizing the following contact information:

State Auditor  
 Office of the State Auditor  
 Suite 801, Woolfolk State Office Building  
 Post Office Box 956  
 Jackson, MS 39201  
 Phone: (601) 576-2800  
 Website: [www.osa.state.ms.us](http://www.osa.state.ms.us)

Source: *Miss. Code Ann.* §§ 25-43-2.104 to 25-43-2.105, 7-7-202, 7-7-211.

**Part 1 Chapter 2: Administrative Procedure Regulating the Adoption, Amendment, or Repeal of Agency Rules.**

*Rule 2.1 Authority.* This administrative procedure is adopted in accordance with the requirements of Section 25-43-1.101 et seq. of the Mississippi Code of 1972, as amended.

Source: *Miss. Code Ann.* § 25-43-1.101, et seq.

*Rule 2.2 Notice of Proposed Rule Action.* The Office of the State Auditor, as required by Section 25-43-1.101 of the Mississippi Code of 1972, prior to the adoption, amendment or repeal (“rule action”) of any rule that implements, interprets or prescribes law or policy or describes the organization and its procedures and/or practices, shall give at least twenty-five (25) days’ notice of its intended action. This notice shall include:

- (a) the docket number of the proposed rule action;
- (b) a description of the subjects and issues involved in the rule action;
- (c) and a description of how interested persons may present their views.

The notice shall be filed by the Office of the State Auditor (OSA) with the Secretary of State’s Office and mailed by OSA to all persons who have made timely request for advance notice of its rule action proceedings.

Source: *Miss. Code Ann.* §§ 25-43-1.101, 25-43-3.103.

*Rule 2.3 Emergency Rule Procedure.* Should the State Auditor determine that an emergency exists because of an imminent threat to the public, he or she may thereby invoke rule actions with fewer than twenty-five (25) days’ notice. In any such instances, the Office of the State Auditor must state in writing its reasons for doing so. It may abbreviate or eliminate the rule action notice for a period of not longer than one hundred and twenty (120) days renewable one time for not more than ninety (90) days. After this time, the normal notice procedure would once again apply.

Source: *Miss. Code Ann.* § 25-43-3.108.

*Rule 2.4 Public Participation.* Within the twenty-five (25) day notice period, any interested person may submit written data, views, arguments, or other comments for consideration by the Office of the State Auditor prior to adoption of any policy or procedure. Any written comment should refer to the docket number appearing in the heading of the rule action notice and should be addressed to the Office of the State Auditor. The State Auditor may choose to extend the time period for submission of comments.

Source: *Miss. Code Ann.* § 25-43-3.104.

*Rule 2.5 Hearings.* The State Auditor may invite interested persons to present their views orally at an informal hearing or participate in any procedure enabling those views to be adequately expressed. An oral proceeding will be conducted in the event that it is requested in writing by a political subdivision, state agency, or ten (10) interested persons. The State Auditor shall send a notice which fixes a time and place for such a hearing to each party requesting an opportunity to be heard or who submitted written comments. Further, the State Auditor shall send a notice to all persons who have made timely request of the Office of the State Auditor for advance notice of its rule action proceedings.

For purposes of law, hearings related to rule action proceedings are to be regarded as informal. Statutory provisions governing formal hearings and adjudicatory proceedings, therefore, do not apply. Any hearing held to solicit feedback regarding a given rule is a non-adversarial fact-finding proceeding. Any rule action taken under this procedure need not be based exclusively on the record of such hearings.

In the event that a hearing is conducted, the State Auditor may designate a representative to conduct a hearing.

- (a) The presiding official shall determine all procedural questions, except for those specifically governed by this legislation. This includes the maximum number of speakers which can be accommodated in a single session and imposing any necessary and reasonable time and presentation limitations.
- (b) Anyone requesting an opportunity to be heard may attend a hearing, with or without legal counsel. A hearing participant may submit written comments. They may bring experts with them. The length of any presentations, remarks, or questions by these persons will also be determined by OSA's presiding official.
- (c) The obtaining and use of experts or other authorities or resource persons is the responsibility of the parties attending the meeting. Any person acting in this capacity may be questioned by the presiding official.
- (d) Any interested party in attendance at a public hearing shall have the opportunity to make an oral presentation.
- (e) The presiding official has the authority to exclude data or materials deemed to be improper or irrelevant. However, formal rules of evidence and other related judicial rules will not apply.
- (f) The minutes, along with any other pertinent record of the hearing, will be kept in the official rules file.

Source: *Miss. Code Ann.* § 25-43-3.104.

*Rule 2.6 Rule Action Docket.* The Office of State Auditor shall keep a rule action docket ledger in which the following shall be entered:

- (a) the docket number of each proposed rule action;
- (b) the date of the notice of the proposed rule action;
- (c) a short description of the proposed rule action;

- (d) a short description of the comments received stating who made the comment and when it was received;
- (e) a description of the final action taken concerning the proposed rule action; and
- (f) the effective date of the action.

Source: *Miss. Code Ann.* § 25-43-3.102.

*Rule 2.7 Rule File.* The rule file will contain documents which are public records and which are part of specific rule actions procedures, including:

- (a) notices of each proposed rule action;
- (b) written comments and summary of any oral comments received in the event that a hearing is conducted;
- (c) requests to participate in an oral presentation of views;
- (d) any requests for extension of time;
- (e) any grants or denials of requests;
- (f) minutes or other records of informal hearings;
- (g) final rules;
- (h) statements of repeal of rules; and
- (i) any other notice or document relevant to the rule action and the rule action proceedings.

Source: *Miss. Code Ann.* § 25-43-3.102.

*Rule 2.8 Effectiveness of Final Rule Action.* All timely comments will be considered in taking any final rule action. Copies of all final rule actions shall be provided to all persons who had made timely request for advance notice of the Office of the State Auditor's rule action proceedings, and to all persons who have submitted written comments regarding the proposed rule action.

As stated in Section 25-43-9 of the Mississippi Code of 1972, Annotated, as amended, each rule adopted in its final form is effective thirty (30) days after filing with the Office of the Secretary of State, except if:

- (a) a later date is required by statute or specified in the rule, in which case the later date is the effective date.
- (b) in accordance with any constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing with the Secretary of State's Office as may be necessary because of imminent peril to the public health, safety or welfare.

No rule shall become effective prior to the time limits imposed by Section 25-43-9 of the Mississippi Code of 1972, Annotated, as amended.

No rule action is valid unless taken in substantial compliance with this regulatory procedure.

Any party believing it is adversely impacted by a proposed rule action may seek review of the final rule action in a court of proper jurisdiction.

Source: *Miss. Code Ann.* §§ 25-43-1.101, 25-43-2.105, 25-43-3.113, 25-43-9.

## **Part 1 Chapter 3: Declaratory Opinions**

*Rule 3.1 Authority.* This regulation is adopted to conform to the requirements of Section 25-43-2.105 of the Mississippi Code of 1972, Annotated, as amended.

Source: *Miss. Code Ann.* §§ 25-43-2.103 to 25-43-2.105.

*Rule 3.2 Requests for Opinions.* Any person with direct substantial interest may make a written request for a declaratory opinion as to the applicability to specific circumstances of a statute, rule, or order administered by the agency or within its primary jurisdiction. The term ‘substantial interest’ will include any person with direct involvement in implementing public programs or governmental activities for which the Office of the State Auditor is responsible. The term ‘primary jurisdiction’ means that the agency has a constitutional or statutory grant of authority in the subject matter being considered.

Written requests for opinions may be sent in a letter form or may be e-mailed to the agency according to written website instructions. Each written request shall:

- (a) be set forth the specific facts on which the opinion is to be based;
- (b) be limited to a single transaction or occurrence; and
- (c) contain all relevant contact information

Source: *Miss. Code Ann.* §§ 25-43-2.103 to 25-43-2.105.

*Rule 3.3 Subjects Which may be Addressed.* The Office of the State Auditor will issue declaratory opinions regarding the application of specified facts to: (1) a statute administered or enforceable by OSA or (2) a rule it has promulgated. The agency will not issue a declaratory opinion regarding a statute or rule which is outside the primary jurisdiction of the agency.

Source: *Miss. Code Ann.* §§ 25-43-2.103 to 25-43-2.105.

*Rule 3.4 Circumstances in Which Declaratory Opinions will not be Issued.* The Office of the State Auditor may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are limited to:

- (a) lack of clarity concerning the question presented;
- (b) pending or anticipated litigation, administrative action, or any other adjudication which might either answer the question or make an answer unnecessary;
- (c) The statute or rule on which a declaratory opinion is sought is clear and does not need interpreting to answer the question.
- (d) The facts provided are not sufficient to answer the question presented.
- (e) The request fails to contain required information.
- (f) The requestor either lacks substantial interest or the issue is outside the primary jurisdiction of the requesting agency.
- (g) The requestor is not substantially affected by the statute or rule on which the opinion is sought.
- (h) The requestor is not faced with an issue that requires an answer to be forthcoming.
- (i) The question concerns the legal validity of a statute or rule.

- (j) The request is not intended to aid in future conduct, but instead is intended to primarily justify past conduct.
- (k) No clear answer is determinable.
- (l) The question involves the application of a criminal statute or a set of facts which may constitute a crime.
- (m) The answer to the question requires disclosure of information which is protected by law from such disclosure.
- (n) The question is currently the subject of an Attorney General's opinion or has been already answered in writing by the Attorney General.
- (o) A similar request is pending elsewhere, whereby a written OSA opinion might constitute the unauthorized practice of law.
- (p) Issuance of an opinion may affect the interests of the State, its officers, and employees in pending or anticipated litigation.
- (q) The question involves eligibility for a license, permit, or other approval and there is statutory or regulatory process by which eligibility would be determined.

Source: *Miss. Code Ann.* § 25-43-2.105.

*Rule 3.5 Where to Send Requests.* All requests must be mailed, delivered or transmitted via facsimile to the Office of the State Auditor. They may also be submitted electronically via e-mail. No oral or telephone requests will be accepted for official opinions.

Source: *Miss. Code Ann.* §§ 25-43-2.103, 25-43-2.105.

*Rule 3.6 Agency Response.* Written agency opinions prepared in response to this rule may be issued by the State Auditor or, with his authorization, by the Audit Department Director, or by the director of the division responsible for implementation of the statute, rule, or order. Within forty-five (45) days of receipt of a written request for a declaratory opinion, the agency, in writing, shall:

- (a) issue an opinion regarding the applicability of the statute, rule, or order in question to the specific 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 State of Mississippi business day on or after the request is received by OSA.

Source: *Miss. Code Ann.* §§ 25-43-2.103, 25-43-2.105.

*Rule 3.7 Opinion Issuance.* A copy of all opinions prepared in response to a written request for a declaratory opinion must be mailed within three (3) business days of issuance to the requesting person.

Source: *Miss. Code Ann.* §§ 25-43-2.103, 25-43-2.105.

*Rule 3.8 Opinion not Final for Thirty Days.* A declaratory opinion shall not become final until the expiration of thirty (30) days after the issuance of the opinion. Prior to the expiration of thirty (30) days, the State Auditor may, in his 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 requestor failed to meet the requirements of the rules or that the opinion contains a legal or factual error. Each opinion letter must state that the date when the opinion is final.

Source: *Miss. Code Ann.* §§ 25-43-2.103, 25-43-2.105.

*Rule 3.9 Procedural Rights of Persons Receiving Declaratory Opinions.* When any person making a request receives a declaratory opinion, to the extent that the facts provided in the request apply to the actual situation, the agency will take no civil or criminal action against that person acting in the same circumstances, who, in good faith follows the direction contained in the opinion. However, if a court of competent jurisdiction, declares the opinion to be manifestly wrong and without substantial support, it shall be null and void.

Source: *Miss. Code Ann.* §§ 25-43-2.103, 25-43-2.105.

*Rule 3.10 Third Party Applicability.* Any declaratory opinion issued by the Office of the State Auditor (OSA) shall not be binding or effective for any third party or person other than OSA and the person to whom the opinion is issued. It shall not, under any circumstances, be used as a precedent for any other transaction or occurrence beyond the facts and circumstances set forth by the requesting person.

Source: *Miss. Code Ann.* § 25-43-2.105.

*Rule 3.11 Notice to Specific Third Parties.* The Office of the State Auditor may give notice to any person, agency or entity that declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from other persons, agencies, or other entities other than the requestor.

Source: *Miss. Code Ann.* §§ 7-5-25, 25-43-2.103.

*Rule 3.12 Requests for Opinions from the Attorney General.* The authority of persons to request and receive agency declaratory opinions does not affect the ability of any person authorized to request a legal opinion from the Attorney General under Section 7-5-25 of the Mississippi Code of 1972, as amended.

Source: *Miss. Code Ann.* §§ 7-5-25, 25-43-2.103.

*Rule 3.13 Public Access to Declaratory Opinions.* They will be maintained in comprehensive agency file indexed by name and subject. The file will not include any information deemed to be confidential by statute or exempt from public disclosure as a result of another provision of law. All declaratory opinions and their respective written requests shall be available for public inspection and copying in accordance with the Public Records Act and OSA's public records request procedure, subject to any confidentiality provisions established by law.

Source: *Miss. Code Ann.* § 25-43-2.103.