DELBERT HOSEMANN
Secretary of State

Administrative Procedures Act Rules

Title 1: Secretary of State

Part 1: Administrative Law

Part 1 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).

Part 1 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:

[title] Mississippi Administrative Bulletin [reference number], at [page number(s)] ([filed date]).

A. [title] represents the agency designation or broad subject matter title within which the rules are organized, as assigned by the Secretary of State.
B. [reference number] represents the unique number assigned to a proposed rule adoption, a final rule adoption, or an emergency rule adoption when it is filed with the Secretary of State's Office. The reference number is assigned when a rule is uploaded to the Administrative Bulletin for publication. This identifier is located on the last line of the summary description of the rule.
C. [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.
D. [file date] represents the specific date on which a proposed rule adoption, a final rule adoption, or an emergency rule adoption is filed with the Secretary of State's Office. For citation purposes, file dates shall be represented using

two digits for the month, two digits for the day, and four digits for the year. These numbers shall be separated by slashes. For example, June 23, 2010 would be cited as: 06/23/2010.

1) Example: If the Secretary of State's Office filed a proposed rule on December 2, 2009 and was assigned a reference number of 99999, the citation to the second page of the document is:

1 Mississippi Administrative Bulletin 99999, at 2 (12/02/2009).

2) A short citation to the second page of the same document is:

1 Miss. Admin. Bull. 99999, at 2 (12/02/2009).

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 of the Administrative Procedures Act. Minor typographical errors 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 or any submission not in compliance with the statutory requirements for notice and due process.

Source: *Miss. Code Ann.* § 25-43-2.101 (1),(4) (Rev. 2006).

Rule 2.5 Transfer of Adopted Rules to the Mississippi Administrative Code. Following the final 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).

Part 1 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 June 30, 2011. Compilations shall be formatted in accordance with these rules unless otherwise approved by the Secretary of State's Office as contemplated by Miss. Code Ann. § 25-43-1.103(4). 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 Part.

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

Rule 3.3 Organization of the Mississippi Administrative Code.

A. The purpose of the organizational structure set forth in these rules is to allow a flexible adaptation for both large, complex agencies as well as smaller agencies, boards, or commissions, yet achieve a simplified uniform identity for the Administrative Code. The basic organization of the Code is Title/Part/Chapter/Rule. Agencies that need additional levels of organization may utilize Subparts and Subchapters. **Every agency that fully complied with prior rules on organization of the Administrative Code on or before January 1, 2010, as determined by the Secretary of State's Office, may maintain its current title assignment and rule structure, provided that any such agency submits an updated, complete compilation of its rules as required by Rule 3.2. Agencies that must format rules in accordance with federal or other superseding law or Agencies that prepare and publish manuals may request a waiver from compliance with this rule, in the discretion of the Secretary of State's Office.**
B. 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. Title assignments by the Secretary of State are 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. Parts (and Subparts, where necessary) relate to subject or topic areas of responsibility the agency administers. 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. For small agencies, boards, or commissions that administer a single area of responsibility, the use of a single Part under the heading "Licensing and Enforcement," for example, may be sufficient for its needs. Parts are assigned by the Secretary of State's Office. Agencies that share a

Title should refer to the Index of Titles of the Mississippi Administrative Code to determine the range of Parts assigned to the agency.

D. Chapters (and Subchapters, where necessary) are groupings of related rules within a Part (or Subpart). For example, an agency may group together rules pertaining to applications, examinations, licensing, enforcement, fees and fines, hearing administration, etc., in respective Chapters, depending upon the agency's organizational structure and complexity.

E. A rule is the fundamental unit of the Administrative Code. Rules are contained within Chapters or Subchapters.

F. Each rule is identified with its own Mississippi Administrative Code citation format. The structure of the citation is as follows:

[title] Mississippi Administrative Code, Pt. ___, R. ___.___.

i. [title] represents the agency designation or broad subject matter title within which the regulation is organized, as assigned by the Secretary of State.
ii. Pt. ___ represents the Part in which Chapters (and Subparts, where necessary) are housed.
iii. R. ___.___ represents Rule numbers, the prefix being the chapter number, and the suffix being the rule number.

1. Example: If the Secretary of State filed Rule number 2 in chapter 30, Part 2, the citation is:

1 Mississippi Administrative Code Pt. 2, R. 30.2.

2. The short citation is :

1 Miss. Admin. Code Pt. 2, R. 30.2.

If an agency uses sub-categories not denoted in the above citations, they must include those sub-categories in the rule citation following as closely as possible the citation format noted above.

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

Part 1 Chapter 4: Rule Making Procedures

Rule 4.1 Mediums of Rule Submission.

A. The agency submitting a **proposed** rule for publication in the Mississippi Administrative Bulletin shall submit five (5) documents as listed below:
   1. Word version of Form 001 and 002,
   2. PDF version of Form 001 and 002,
   3. Word version of rule text,

4. PDF version of rule text, and
5. PDF version of Economic Impact Statement.

If your agency's proposed rule does not impose a duty, responsibility, or requirement on any person, you may omit the Word and PDF version of Form 002 and the Economic Impact Statement.

B. The agency submitting a **final** rule for publication in the Mississippi Administrative Bulletin shall submit four (4) document as listed below:
   1. Word version of Form 001,
   2. PDF version of Form 001,
   3. Word version of rule text, and
   4. PDF version of rule text.

C. **Submission of a paper copy is not required.**

D. 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.

E. 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:
   1. Agency name,
   2. Contact person,
   3. Phone number, and
   4. Email address.

   The submission must be delivered to the following address:

   Secretary of State's Office
   Attn: Regulation and Enforcement Division
   125 South Congress Street
   Jackson, MS 39201

F. 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 rule text submitted for publication shall be formatted with 1 inch margins and single sided pages. Rule text shall be typewritten using a 12 point Times New

Roman font and shall generally be single spaced with double spaces between paragraphs of rule text 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. Economic Impact Statement, SOS APA Form 003.

Forms must be obtained by contacting the Regulation and Enforcement Division of the Secretary of State's Office at (601) 359-9055.

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

Rule 4.5 Administrative Procedures Filing Notice. Each rule submitted for publication shall include 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 (Word and PDF formats) The PDF electronic image must include the required original signature of the person authorized to file rules for the submitting agency along with the typewritten name and title of the person signing the document and date. For the Word format, signature should 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, each proposed rule shall include 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 (Word and PDF formats). The PDF electronic image must include the required original signature of the person authorized to file rules for the submitting agency along with the typewritten name and title of the person signing the document and the date. For the Word format, the signature should be represented with an "/s/".

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

Rule 4.7 Economic Impact Statement. Where required by the Administrative Procedures Act, each proposed rule shall include the Economic Impact Statement – APA Form 003. This form must be included on the electronic storage media or in the email submission in PDF format only.

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

Rule 4.8 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 4.9 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 FIVE (5) documents:
   1. Word and PDF version of:
      a. Notice Filing (SOS APA Form 001).
      b. Concise Summary of Economic Impact Statement (SOS APA Form 002), if required.
   2. Word and PDF version of: the text of the rule if the proposed amended language is adopted and a variance consisting of the existing rule with the proposed changes and amendments indicated using a ~~strike through~~ and <u>underscore</u> method. Text of the existing rule that is to be deleted should be struck through (not redacted) and new inserted text should be underscored.
   3. PDF version of the Economic Impact Statement (APA Form 003), if required.

B. **Final adopted amendments** or changes to existing rules must include FOUR (4) documents:
   1. Word and PDF version of:
      a. Notice Filing (SOS APA Form 001).
   2. Word and PDF version of: The final text of the rule as it will appear for publication in the Administrative Code and 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 <u>underscore</u> method. Text that is to be deleted should be struck through (not redacted) and new inserted text should be underscored. The variance should be omitted if the amendment is adopted with no change.

C. For **proposed new rules** agencies must include the following FIVE (5) documents:
   1. Word and PDF version of:
      a. Notice Filing (SOS APA Form 001).
      b. Concise Summary of Economic Impact Statement (SOS APA Form 002), if required.
   2. Word and PDF version of: the text of the proposed new rule.
   3. PDF version of the Economic Impact Statement (APA Form 003), if required.

D. For **final adoption of new rules**, agencies must include the following FOUR (4) documents:

1. Word and PDF version of:
    a. Notice Filing (SOS APA Form 001).
2. Word and PDF version of: the final text of the new rule as it will appear for publication in the Administrative Code and 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. The variance should be omitted if the rule is adopted with no change from the proposed rule.

E. For a **proposed repeal of an existing rule**, agencies must include the following FIVE (5) documents:
    1. Word and PDF version of:
        a. Notice Filing (SOS APA Form 001).
        b. Concise Summary of Economic Impact Statement (SOS APA Form 002), if required.
    2. Word and PDF version of: the rule citation, followed by the title or caption, if appropriate, and the word "REPEAL" in all caps following the rule number and title and 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.
    3. PDF version of the Economic Impact Statement (APA Form 003), if required.

F. For **final adoption of a rule repeal**, agencies must include the following FOUR (4) documents:
    1. Word and PDF version of:
        a. Notice Filing (SOS APA Form 001).
    2. Word and PDF version of: 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 Pt. I, R. 4.8. Organization of Rule Submissions. REPEALED. Effective mm/dd/yyyy.

NOTE: 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 rule is presented for final adoption as an amendment to an existing rule under paragraph B of this rule.

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

Rule 4.10 Pagination Requirements.

A. 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 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.

B. 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).

C. The Economic Impact Statement (APA Form 003) should also be paginated as stated above.

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

Part 1 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).

Part 1 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).

Part 1 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).

Part 1 Chapter 8: Declaratory Opinions [Model]

Rule 8.1 Model Rules. This chapter consists of model rules addressing the public's request for declaratory opinions and an agency's disposition of requests for declaratory opinions. The Secretary of State's Office is required to provide these model rules under Miss. Code Ann. § 25-43-2.105. Agencies are not required to adopt these model rules.

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

Rule 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; and
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 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).