

## **Title 6: Economic Development**

### **Part 5: Policies, Procedures and Organization**

#### **Part 5 Chapter 1: Debarment and Suspension Policy**

*Rule 1.1 Policy.* In order to protect the public trust and interest imposed upon the Mississippi Development Authority (MDA), it is the policy of the agency to conduct business only with responsible persons. However, when it appears that a subgrantee's and/or its agent, agents, and/or any entity's conduct, as determined by the agency, creates a reasonable belief that a particular act or omission, which would be covered by this policy, has occurred, MDA shall implement discretionary actions known as debarment and suspension. Debarment and suspension are serious actions which shall be used only in the public interest and for the agency and the State Of Mississippi's protection and not for purposes of punishment. MDA may impose debarment or suspensions for causes and in accordance with the procedures set forth herein.

Source: Miss. Code Ann. §57-5-5 (Rev. 2008)

*Rule 1.2 Coverage.* This policy shall apply to all subgrantees, and/or its agent, agents, and/or anyone or any entity acting on behalf of a subgrantee, who have participated in, or are presently participating in MDA programs. For purposes of these regulations, transactions will be subdivided into (1) primary transactions, i.e., any transaction between MDA and the subgrantee, and/or its agent, agents, and/or anyone/any entity acting on behalf of a subgrantee, regardless of type, or (2) lower tier transactions, i.e., transactions between subgrantee, and/or its agent, agents, and/or anyone or any entity acting on behalf of a subgrantee, and another, regardless of type, under a primary transaction. When more than one agency has an interest in the proposed debarment or suspension of a person or entity, consideration shall be given to designating one agency as the lead agency for making the decision.

Source: Miss. Code Ann. §57-5-5 (Rev. 2008)

*Rule 1.3 Effect of Action.* Except to the extent prohibited by law, subgrantee's, and/or its agent, agents and/or anyone, or any entity who are debarred or suspended shall be excluded from primary transactions and lower tier transactions for the period of their debarment or suspension.

Source: Miss. Code Ann. §57-5-5 (Rev. 2008)

*Rule 1.4 Debarment.* The MDA Executive Director, as the debarring official, or his designee, after consultation with the appropriate Division Director, may debar a subgrantee, and/or its agent, agents, and/or anyone or any entity acting on subgrantee's behalf for any causes noted herein. However, the existence of a cause for debarment does not necessarily require that the subject be debarred. The seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment

decision. Debarment means, for the purpose of the MDA, an action taken by an agency in accordance with these rules to exclude the subject from participating in a covered transaction.

Source: Miss. Code Ann. §57-5-5 (Rev. 2008)

*Rule 1.5 Causes for Debarment.* Debarment may be imposed for:

- A. Conviction of or civil judgment for:
  - (i). Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
  - (ii). Violation of Federal or State antitrust statutes, including those prescribing price fixing between competitors, allocation of customers between competitors, and bid rigging;
  - (iii). Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or
  - (iv). Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.
- B. Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:
  - (i). A willful failure to perform in accordance with the terms of two or more public agreements or transactions;
  - (ii). A history of failure to perform or unsatisfactory performance of two or more public agreements or transactions;
  - (iii). A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction; or
  - (iv). Any other cause of so serious or compelling a nature that it affects the present responsibility of a person, entity or the operation and/or integrity of a program.
- C. Any of the following causes:

A procurement or nonprocurement debarment taken by any Federal agency pursuant to 48 CFR Subpart 9.4.

- (i). Knowingly doing business with a debarred, suspended, ineligible or voluntarily excluded person, in connection with a transaction, except as expressly permitted by the agency in writing; or
- (ii). Any other cause of so serious or compelling a nature that it affects the present responsibility of a person or entity.

Source: Miss. Code Ann. §57-5-5 (Rev. 2008)

*Rule 1.6 Procedures.* MDA shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness using the procedures in Rules 1.7 through 1.11.

- A. Information concerning the existence of a cause for debarment from any

source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official, MDA's Executive Director, or his designee, may issue a notice of proposed debarment.

B. MDA shall establish an administrative file upon receipt of any information concerning a possible cause for debarment or suspension. This administrative file is the property of MDA and not subject to review by the public.

Source: Miss. Code Ann. §57-5-5 (Rev. 2008)

*Rule 1.7 Notice of Proposed Debarment.* A debarment proceeding shall be initiated by written notice, through certified mail, to the respondent advising:

- A. That debarment is being considered;
- B. Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;
- C. Of the causes relied upon under Rule 1.5 "Causes for Debarment" above;
- D. Of the opportunity and procedures to contest the proposed debarment and a final adverse decision; and
- E. Of the potential effect of a debarment

Source: Miss. Code Ann. §57-5-5 (Rev. 2008)

*Rule 1.8 Opportunity to Contest Proposed Debarment.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, personally or through a legal representative, in writing, information and arguments in opposition to the proposed debarment.

- A. Agency Proceeding As to Disputed Material Facts
  - (i). In actions not based upon a conviction or civil judgment, if the debarring official finds the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear before the debarring official with a representative, submit written documentary evidence in the form of paper documents and sworn affidavits. MDA will accept sworn affidavits from respondent's witnesses.
  - (ii). A transcribed record of the Agency Proceeding may be made by the respondent, at their own cost, provided they have received the prior written approval of the debarring official.
  - (iii). Technical rules of evidence shall be relaxed during Agency Proceedings.
  - (iv). Respondent must obtain prior written approval of the debarment official regarding the use of a court reporter at least two weeks prior to the Agency Proceeding.

Source: Miss. Code Ann. §57-5-5 (Rev. 2008)

*Rule 1.9 Debarring Official's Decision*

- A. No Agency Proceeding Necessary. In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submissions made by the respondent. The decision shall be made within 30 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.
- B. Agency Proceeding Necessary
  - (i). In actions in which an Agency Proceeding is necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.
  - (ii). The debarring official's decision shall be made after the conclusion of the Agency Proceeding and careful consideration of all information provided by the parties involved with respect to disputed facts.
- C. Standard of Proof
  - (i). In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or a civil judgment, the standard shall be deemed to have been met.
  - (ii). Preponderance of the evidence is proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
  - (iii). The burden of proof is on the agency proposing debarment.
- D. Notice of Debarring Official's Final Decision
  - (i). If the debarring official decides to impose debarment,
    - (a). the respondent shall be given prompt written notice by certified mail:
    - (b). Referring to the notice of proposed debarment;
    - (c). Specifying the reasons for debarment;
    - (d). Stating the period of debarment, including effective dates; and,
    - (e). Advising that the debarment is effective for covered transactions throughout the agency.
  - (ii). If the debarring official decides not to impose debarment, the respondent shall be given prompt written notice by certified mail of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.
  - (iii). The decision of the debarring official is final.

*Rule 1.10 Period of Debarment.*

- A. Debarment shall be for a period of time commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.
- B. The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest.
- C. Debarment for causes set forth in Rule 1.5(a)(4) through Rule 1.5(c)(3) generally should not exceed three (3) years. Where circumstances warrant, a longer period of debarment may be imposed.
- D. Debarment for cause set forth in Rule 1.5(a)(1), (2) and (3) generally shall not exceed seven (7) years.
- E. The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and the circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures set forth at Rule 5.7 "Notice of Proposed Debarment" shall be followed to extend the debarment.
- F. The respondent may request the debarring official reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:
  - (i). Newly discovered material evidence;
  - (ii). Reversal of the conviction or civil judgment upon which the debarment was based;
  - (iii). Bonafide change in ownership or management;
  - (iv). Elimination of other causes for which the debarment was imposed; Or,
  - (v). Other reasons the debarring official deems appropriate.
- G. Where respondent's request to reduce the period or scope of debarment is based on reasons set forth at Rule 1.10(f) such request may not be submitted earlier than six (6) months after the final decision to debar. In no event may more than one such request be submitted within any 18-month period.

Source: Miss. Code Ann. §57-5-5 (Rev. 2008)

*Rule 1.11 Scope of Debarment.*

- A. Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

B. The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond as set forth at Rule 1.7.

C. The fraudulent, criminal or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

D. Persons debarred will be placed on MDA's Debarment List.

Source: Miss. Code Ann. §57-5-5 (Rev. 2008)

*Rule 1.12 Suspension.* Suspension is a serious action to be imposed only when there exists adequate evidence of one or more of the causes set out in Rule 1.5 "Causes For Debarment", and immediate action is necessary to protect the public interest. For purposes of this agency, suspension is an action taken by MDA in accordance with the following regulations that immediately excludes a subgrantee and/or its agent, agents, and/or anyone/any entity from participating in transactions for a temporary period, pending investigation and such legal action, debarment, or other proceedings as may ensue.

A. In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations and contracts.

Source: Miss. Code Ann. §57-5-5 (Rev. 2008)

*Rule 1.13 Causes for Suspension.* Suspension may be imposed upon adequate evidence to suspect the commission of a debarment offense as listed in Rule 1.5 "Causes for Debarment". Indictment, conviction of a criminal misdemeanor or felony, or a civil judgment in a matter which has a direct bearing upon a person's persistent responsibility and capacity to perform the contract or service in question, alone shall constitute adequate evidence for purposes of suspension actions.

Source: Miss. Code Ann. §57-5-5 (Rev. 2008)

*Rule 1.14 Procedures For Investigation and Referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a Notice of Suspension. MDA shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in Rule 1.15

“Notice of Suspension”.

Source: Miss. Code Ann. §57-5-5 (Rev. 2008)

*Rule 1.15 Notice of Suspension.* When a respondent is suspended, written notice, by certified mail, shall be immediately given:

- A. That suspension has been imposed;
- B. That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further agency dealings with the respondent;
- C. Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the agency's evidence;
- D. Of the cause(s) relied upon as set forth in Rule 1.5 "Causes For Debarment";
- E. Of the effect of the suspension.

Source: Miss. Code Ann. §57-5-5 (Rev. 2008)

*Rule 1.16 Suspending Official's Decision.* The suspending official may modify or terminate the suspension for reasons as set forth at Rule 1.10(f) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice, to the subsequent imposition of debarment.

Source: Miss. Code Ann. §57-5-5 (Rev. 2008)

*Rule 1.17 Period of Suspension.* Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal action, or debarment. If legal, administrative or debarment proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated, unless the Executive Director determines that this time should be extended. The suspension may be extended for six (6) months. In no event may a suspension extend beyond 18 months, unless debarment proceedings have been initiated during that period.

Source: Miss. Code Ann. §57-5-5 (Rev. 2008)

*Rule 1.18 Scope of Suspension.* The scope of a suspension is the same as the scope of a debarment (see Rule 1.11), except that the procedures of Rule 1.13 through Rule 1.17 shall be used in imposing a suspension.

Source: Miss. Code Ann. §57-5-5 (Rev. 2008)

*Rule 1.19 Settlement and Voluntary Exclusion.* When it is in the best interest of the agency, MDA may, at any time, settle a debarment or suspension action. If a participant and MDA agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Debarment List.

Source: Miss. Code Ann. §57-5-5 (Rev. 2008)

## **Part 5 Chapter 2: Rule-Making Oral Proceedings**

*Rule 2.1 Application of Chapter.* 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 pursuant to the Administrative Procedures Act.

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

*Rule 2.2 Request for Oral Proceeding.* 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 MDA.
- 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 2.3 Notice of Oral Proceeding.* 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 2.4 Public Participation Guidelines.* 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 arguments at such a proceeding may notify the MDA at least three business days prior to the proceeding and indicate the general subject of their arguments. The presiding officer in his or her discretion may allow individuals to participate that have not contacted the MDA 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 comments when necessary to assure the orderly and expeditious conduct of the oral proceeding.
- E. Persons making arguments are encouraged to avoid restating matters that have

already been submitted in writing. Written materials may, however, be submitted at the oral proceeding.

G. 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 2.5 Submissions and Records.* 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 MDA, part of the rulemaking record, and are subject to the MDA's public records request procedure. The MDA may record oral proceedings by stenographic or electronic means.

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

### **Part 5 Chapter 3: Declaratory Opinions**

*Rule 3.1 Model Rules.* This chapter consists of model rules addressing the public's request for declaratory opinions and the MDA's disposition of requests for declaratory opinions.

Source: *Miss. Code Ann.* § 25-43-2.103 (Rev. 2006).

*Rule 3.2 Application of Chapter.* This chapter sets forth the MDA'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 MDA's procedures regarding the disposition of requests as required by Mississippi Code § 25-43-2.103.

Source: *Miss. Code Ann.* § 25-43-2.103 (Rev. 2006).

*Rule 3.3 Scope of Declaratory Opinions.* The MDA will issue declaratory opinions regarding the applicability to specified facts of:

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

Source: *Miss. Code Ann.* § 25-43-2.103 (Rev. 2006).

*Rule 3.4 Scope of Declaratory Opinion Request.* A request must be limited to a single transaction or occurrence.

Source: *Miss. Code Ann.* § 25-43-2.103 (Rev. 2006).

*Rule 3.5 How to Submit Requests.* When a person with substantial interest, as required by Section 25-43-2.103 of the Administrative Procedures Act, requests a declaratory opinion, the requestor must submit a printed, typewritten, or legibly handwritten request.

- 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 MDA.
- 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.* § 25-43-2.103 (Rev. 2006).

*Rule 3.6 Signature Attestation.* Any party who signs the request shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any agency, administrative, or judicial tribunal.

Source: *Miss. Code Ann.* § 25-43-2.103 (Rev. 2006).

*Rule 3.7 Request Content Requirement.* 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 3.8 Reasons for Refusal of Declaratory Opinion Request.* The MDA 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 MDA;
- 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 MDA 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.* § 25-43-2.103 (Rev. 2006).

*Rule 3.9 Agency 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 MDA 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 MDA.

Source: *Miss. Code Ann.* § 25-43-2.103 (Rev. 2006).

*Rule 3.10 Availability of Declaratory Opinions and Requests for Opinions.* MDA 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.* § 25-43-2.103 (Rev. 2006).

## **Part 5 Chapter 4: Organization of the Mississippi Development Authority**

*Rule 4.1 Chapter Content.* In accordance with Section 25-43-2.104(a) of the Mississippi Administrative Procedures Act, this chapter describes the Mississippi Development Authority's duties and responsibilities, the organization of the Mississippi Development Authority's office, its methods of operation, and how the public can contact the agency to make submissions or requests.

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

*Rule 4.2 Mississippi Development Authority's Organization.* The Mississippi Development Authority consists of an executive director appointed by the Governor, with the advice and consent of the Senate. The executive director shall be the executive officer of the department in the execution of any and all provisions of this chapter.

Source: *Miss. Code Ann.* §57-1-5 (Rev. 2008).

*Rule 4.3 Executive Director Duties.* The executive director shall have the following powers and duties:

- A. To formulate the policy of the department regarding economic and tourist development of the State.
- B. To use and expend any funds from the state, federal or private sources coming into the department for the purposes provided pursuant to statute.
- C. To implement the duties assigned to the department and consistent with specific requirements of law, including but not limited to:
  - (i). Support services to include legal, finance, data processing, personnel, communications and advertising, purchasing and accounting;
  - (ii). Research and planning;
  - (iii). Outreach, agency liaison and community development;
  - (iv). Tourism, business travel and film;
  - (v). Programs and assistance for existing state business and industry;
  - (vi). Recruiting new business and industry into the state;
  - (vii). Fostering and promoting of entrepreneurship and the creation of new business in the state;
  - (viii). Programs aimed at competing effectively in the international economy;
  - (ix). Programs relating to the development of the ports;
  - (x). Such other areas as are within the authority and jurisdiction of the department and will promote and foster economic development;
  - (xi). Salaries of associate directors, deputy directors and bureau directors may be set by the executive director of the department.

Source: *Miss. Code Ann.* §57-1-5 (Rev. 2008).

*Rule 4.4 Mississippi Development Authority Legislative Oversight Committee.* There is a Mississippi Development Authority Legislative Oversight Committee charged to serve in an advisory capacity regarding matters under the jurisdiction of the MDA. However, the Committee shall have no jurisdiction or vote on any matter within the jurisdiction of the MDA.

Source: Miss. Code Ann. §57-1-10 (Rev. 2008).

*Rule 4.5 Advisory Council.* The Governor shall appoint an advisory counsel to the agency consisting of twenty-five members, five from each congressional district. The Governor shall serve as chairman of the council. The members shall serve in an advisory capacity and serve without pay and compensation for expenses.

Source: Miss. Code Ann. § 57-1-3 (Rev. 2008).

*Rule 4.6 Contact Information.* A current listing of contact information for the Mississippi Development Authority may be found at [www.mississippi.org](http://www.mississippi.org) or obtained by calling (601)-359-3449.

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

### **Rule 5.1 Authority and Purpose**

These Rules and Regulations are adopted in compliance with the Mississippi Public Records Act of 1983, Miss. Code Ann. §25-61-1 thru 25-61-19, and the Mississippi Ethics Commission's Model for Public Records Rules. All records and portions of records not exempt from disclosure will be made available in accordance with the procedures outlined below.

“It is the policy of the Legislature that public records must be available for inspection by any person unless otherwise provided by this act. Furthermore, providing access to public records is a duty of each public body and automation of public records must not erode the right of access to those records.” Section 25-61-1, Miss. Code of 1972.

“All public records are hereby declared to be public property, and any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of a public body in accordance with reasonable written procedures adopted by the public body concerning the cost, time, place and method of access, and public notice of the procedures shall be given by the public body.” Section 25-61-5, Miss. Code of 1972.

The Act defines “public record” to include “all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, having been used, being in use, or prepared, possessed or retained for us in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body, or required to be maintained by any public body.” Section 25-61-3(b).

The purpose of these rules is to establish the procedures the MDA will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the MDA and establish processes for both requesters and the MDA staff that are designed to best assist members of the public in obtaining such access.

The purpose of the Act is to provide the public full access to public records concerning the conduct of government. The Act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the Act, the MDA will be guided by the provisions of the Act describing its purposes and interpretation.

Source: Miss Code Ann. §§ 25-61-1, -61-5, -61-3(b)

### **Rule 5.2 About the MDA**

The Mississippi Development Authority is composed of the Business Incentives, Business Recruitment and Expansion, Business Research and Workforce Development, Community and Rural Development, Community Incentives, Energy and Natural Resources, Entrepreneur Center, International Trade, Minority and Small Business Development and Tourism divisions.

**Location: 501 North West Street, Suite 1500, Jackson, MS 39201**

### **How to File a Request**

Any person wishing to request access to public records of the MDA or seeking assistance in making such a request should contact the MDA public records officer. All requests to examine, copy or obtain public records from the MDA must be in writing and delivered to the MDA via mail or in person. The request should provide as much detail as possible about the records being requested, include the preferred format (paper copy, flash drive, electronic or inspection) and must include the name, address, and contact information of the requester, including email address and phone number. Requests should be sent to:

Mississippi Development Authority  
P.O. Box 849  
Jackson, MS 39205

501 N. West Street, Suite 1500  
Jackson, MS 39201

This information is also available on the MDA web site at  
[www.mississippi.org](http://www.mississippi.org).

The public records officer will oversee compliance with the Act, but another MDA staff member may process the request. Therefore, these rules will refer to the public records officer “or designee.” The public records officer or designee and the MDA will provide the “fullest assistance” to requester; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the MDA.

Source: Miss Code Ann. §25-61-5

### **Rule 5.3 Availability of Public Records**

- (a) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours of the MDA, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the office of the MDA. The time, place and manner of inspection and copying of records will not be allowed to interfere with other essential duties of the MDA.
- (b) **Organization of records.** The MDA will maintain its records in a reasonably organized manner, subject to the rules of record retention. The MDA will take reasonable actions to protect records from damage and disorganization. A requester shall not take the MDA records from the MDA offices. A variety of records are available on the MDA web site at [www.mississippi.org](http://www.mississippi.org) and at [www.transparency.ms.gov](http://www.transparency.ms.gov). Requesters are encouraged to view the documents available on the web site prior to submitting a records request.
- (c) **Making a request for public records.** Any person wishing to inspect or copy public records of the MDA should mail or hand deliver a hard copy of the request with the following information included:
  - 1. Name of requester
  - 2. Address of requester
  - 3. Other contact information, including telephone number and any e-mail address
  - 4. Identification of the public records adequate to locate the records
  - 5. The date and time of day of the request

If the requester wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to Rule 1.8. Costs of Providing Public Records of this policy, standard 8 ½” X 11” photocopies will be provided at \$.25 a page. (See No. 5.8 Costs of Providing Public Records for additional costs and charges).

Source: Miss Code Ann. 25-61-5

### **Rule 5.4 Processing of public records requests- General**

- (a) **Providing access.** The MDA acknowledges that “providing access to public records is a duty” and that “any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record” in accordance with these policies. Sections 25-61-1, 61-5

The MDA will process requests in the order allowing the most requests to be processed in the most efficient manner.

(b) **Acknowledging receipt of request.** Within seven (7) business days of receipt of the request, the public records officer will do one or more of the following:

1. Make the records available for inspection or copying;
2. If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requester;
3. Provide a reasonable estimate of when the records will be available; or
4. If the request is unclear or does not sufficiently identify the requested records, request clarification from the requester. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or
5. Deny the request.

(c) **Consequences of failure to respond.** If the MDA does not respond in writing within seven (7) business days of receipt of the request for disclosure, the requester should consider contacting the public records officer to determine the reason for the failure to respond.

(d) **Timetable for Processing.** All requests to examine, copy or obtain public records will be approved or denied within fourteen (14) working days after the request is received. Some documents are exempt from disclosure (See Rule 1.6. Exemptions) including records furnished to the MDA by third parties referred to below (See Rule 1.7. Third Party Information). Third parties have twenty-one (21) days from the date of notification to obtain a court order protecting information deemed confidential.

No request will be processed until after payment is received, therefore, depending on when payment is made and/or the scope of the request, it may take longer than fourteen (14) working days before the documents are ready for inspection or to be released.

(e) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records office will, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requester and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(f) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the MDA believes that a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the

nonexempt portions and indicate to the requester why portions of the record are being redacted.

- (g) **Inspection of records.** The MDA shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requester shall indicate which documents, if any, he or she wishes the public body to copy.

The requester must claim or review the assembled records within thirty (30) days of the MDA's notification to him or her that the records are available for inspection or copying. The MDA will notify the requester in writing of this requirement and inform the requester that he or she should contact the MDA to make arrangements to claim or review the records. If the requester or a representative of the requester fails to claim or review the records within the thirty-day period or make other arrangements, the MDA may close the request and refile the assembled records.

- (h) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.
- (i) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty (30) days, the requester fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.
- (j) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the MDA has completed a diligent search for the requested records and made any located nonexempt records available for inspection.
- (k) **Closing withdrawn or abandoned request.** When the requester either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requester that the MDA has closed the request.
- (l) **Later discovered documents.** If, after the MDA has informed the requester that it has provided all available records, the MDA becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requester of the additional documents and provide them on an expedited basis.

**Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

- (m) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty (30) days, the requester fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.
- (n) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the MDA has completed a diligent search for the requested records and made any located nonexempt records available for inspection.
- (o) **Closing withdrawn or abandoned request.** When the requester either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requester that the MDA has closed the request.
- (p) **Later discovered documents.** If, after the MDA has informed the requester that it has provided all available records, the MDA becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requester of the additional documents and provide them on an expedited basis.

Source: Miss Code Ann. §§ 25-61-1, -61-5

### **Rule 5.5 Processing of public records requests – Electronic records**

- (a) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.
- (b) **Providing electronic records.** When a requester requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the public body and is generally commercially available, or in a format that is reasonably translatable from the format in which the public body keeps the record. Costs for providing electronic records are governed by Rule 1.8.

**Customized access to data bases.** With the consent of the requester, the MDA may provide customized access if the record is not reasonably locatable or not reasonably translatable into the format requested. The MDA may charge the actual cost for such customized access.

Source: Miss Code Ann. §§ 25-61-3, -61-5

### **Rule 5.6 Exemptions**

The Public Records Act, as well as other statutes and court decisions, provide that a number of types of records are exempt from public inspection and copying. In addition, other statutes or rules of law, such as various privacy restrictions, may prohibit disclosure. Requesters should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some records held by MDA for inspection and copying:

- (a) Academic records exempt from public access, see § 37-11-51.
- (b) Appraisal records exempt from access, see § 31-1-27.
- (c) Archaeological records exempt from public access, see § 39-7-41.
- (d) Attorney work product, examination, exemption, see § 25-1-102.
- (e) Birth Defects Registry, see § 41-21-205.
- (f) Bureau of vital statistics, access to records, see § 41-57-2.
- (g) Charitable organizations, registration information, exemption from public access, see § 79-11-527.
- (h) Concealed pistols or revolvers, licenses to carry, records, exemption, see § 45-9-101.
- (i) Confidentiality, ambulatory surgical facilities, see § 41-75-19.
- (j) Defendants likely to flee or physically harm themselves or others, see § 41-32-7.
- (k) Environmental self-evaluation reports, public records act, exemption, see § 49-2-71.
- (l) Hospital records, Mississippi Public Records Act exemption, see § 41-9-68.
- (m) Individual tax records in possession of public body, exemption from public access requirements, see § 27-3-77.
- (n) Insurance and insurance companies, risk-based capital level requirements, reports, see § 83-5-415.
- (o) Judicial records, public access, exemption, see § 9-1-38.
- (p) Jury records exempt from public records provisions, see § 13-5-97.
- (q) Licensure application and examination records. exemption from Public Records Act, see § 73-52-1.
- (r) Medical examiner, records and reports, see § 41-61-63.
- (s) Personnel files exempt from examination, see § 25-1-100.
- (t) Public records and trade secrets, proprietary commercial and financial information, exemption from public access, see § 79-23-1; § 25-61-9
- (u) Workers' compensation, access to records, see § 71-3-66.
- (v) Records subject to privilege, such as Attorney/Client, Physician/Patient, etc.
- (w) Economic Development, see § 57-1-14.

Source: Miss Code Ann. § 25-61-11, Miss. Code Ann. § 57-1-1

### **Rule 5.7 Third Party Information**

Upon request to inspect or copy any document so designated, the MDA shall notify the person who filed the document. Twenty-one (21) days after such notice, the document will be made available for public inspection or copying unless the filer shall have obtained a court order protecting such records as confidential pursuant to Section 25-61-9, Miss. Code Ann. of 1972.

Any person filing documents with the MDA shall, prior to filing, redact from the documents any social security numbers, account numbers or dates of birth not required to be listed. The MDA shall determine on a case-by-case basis whether similar information may be redacted by the filer to prevent identity theft. In no event will the MDA bear any responsibility for a filer's failure to redact such information which leads to or may lead to identity theft or other crime or loss.

Source: Miss Code Ann. § 25-61-9

### **Rule 5.8 Costs of providing public records**

(a) **Costs for paper copies.** Section 25-61-7(1), Miss. Code of 1972, reads as follows: "Except as provided in subsection (2) of this section, each public body may establish and collect fees reasonably calculated to reimburse it for, and in no case to exceed, the actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records."

A requester may obtain standard 8 ½" x 11" black and white photocopies for \$.25 cents per page and color copies for \$.50 cents per page. Copy charges for some specific types of records are set by statute and may exceed the amount stated above. Examples of specific MDA copy charges include, but are not limited to, the following:

1. 8 ½" x 11" \$.25 per page
2. 8 ½" x 14" \$.35 per page
3. 11" x 17" \$.75 per page
4. \$15 per hour for basic copies or clerical assistance
5. \$15-\$75 per hour to evaluate, research, redact, reproduce based on the pay scale of the lowest level employee competent to respond to the request
6. \$40 per hour for technical or professional assistance
7. \$50 per hour for automated records search
8. Actual costs for legal review, postage, UPS, Federal Express, temporary agency personnel, and reproduction at an outside print facility

The MDA charges \$.25 per page for a standard black and white photocopy of a record selected by a requester. A statement of the factors and the manner used to determine this charge is available from the public records officer.

**Before beginning to make the copies, the requester must pre-pay all reasonably estimated costs of copying all the records selected by the requester.** The public records officer will also require the payment of the remainder of the copying costs before providing all the records in an

installment before providing that installment. The MDA will not charge sales tax when it makes copies of public records.

The MDA will notify the requester of the costs to obtain the information prior to processing the request. The requester will be required to reimburse the MDA for reasonable costs sufficient to cover the actual expenses incurred by the MDA to furnish the requested information. Payment must be made in advance of the receipt of documents. If the actual cost is higher than the estimate, the requester will be required to pay the difference before receiving the information. If the actual cost is lower than the estimate, the MDA will refund the difference.

Please note that the following types of public records requests usually require additional research and staff time and can have significant costs associated with filling the request: (1) Requests for very large volumes of material (2) Requests that are too broad (3) Requests that are unspecific in scope (4) Requests for information that have already been archived and (5) Requests for documents that are unusual in size.

- (b) **Costs for electronic records.** The cost of electronic copies of records shall be determined on a case-by-case basis for information on a USB Flash Drive or File-Sharing Services.

Such costs include, but are not limited to, time of the lowest paid but qualified staff member to evaluate and research the request, to retrieve any relevant files, to organize the information, to notify any third parties, to develop a cost estimate and schedule, to reproduce any requested material, to observe the inspection of records and to deliver the information requested. If necessary, the MDA may engage third parties to perform these tasks. The requester is required to pay the actual costs of these engagements in advance.

- (c) **Costs of mailing.** The MDA may also charge actual costs of mailing, including the cost of the shipping container.
- (d) **Payment.** Payment may be made by certified check, money order or corporate check made payable to the MDA for the amount specified. **No cash or credit/debit cards can be accepted.**
- (e) **Charges for searching, reviewing and redacting.** The actual cost of searching for and reviewing and, if necessary, redacting exempt information from public records shall be based upon the hourly rate of compensation for the lowest paid agency employee qualified to perform the task, which shall be multiplied by the actual time to complete the task.

**MDA requires payment in advance for all costs before providing copies or access to records.**

Source: Miss Code Ann. §25-61-7

#### **Rule 5.9 Review of denials of public records.**

- (a) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing to the public records officer for a review of that decision. The petition must include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(b) **Consideration of petition for review.** The public records officer must promptly provide the petition and any other relevant information to the Executive Director of MDA or his or her designee. For immediate consideration of the petition and either affirmation or reversal of the denial within two (2) business days following the MDA's receipt of the petition, or within such other time as the MDA and the requester mutually agree to.

(c) **Opinion by the Ethics Commission.** Pursuant to Section 25-61-13, if the MDA denies a requester access to public records, the requester may ask the Ethics Commission to review the matter. The Ethics Commission has adopted rules on such requests. They may be found at [www.ethics.state.ms.us](http://www.ethics.state.ms.us).

(d) **Judicial review.** Any person whose request for public records was denied may institute a suit in the Chancery Court of Hinds County, seeking to reverse the denial, as set forth in Section 25- 61-13.

Source: Miss Code Ann. §25-61-13

#### **Rule 5.10 Public Information via the Internet**

Information may be on MDA's website at [www.mississippi.org](http://www.mississippi.org). In addition, information on the state budget, expenditures, travel, contracts, leases, workforce and grants may be available free of charge at [transparency.ms.gov](http://transparency.ms.gov).

#### Contact Information:

Mississippi Development Authority  
Public Records Officer  
P.O. Box 849  
Jackson, Mississippi 39205

501 N. West Street, Suite 1500  
Jackson, MS 39201  
(601) 359-3449

**Adopted:** November 15, 2023

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