MISSISSIPPI LEGISLATURE  
REGULAR SESSION 2000  

By: Bryan  
To: Judiciary  

SENATE BILL NO. 2756

AN ACT TO CREATE THE "MISSISSIPPI ADMINISTRATIVE PROCEDURES LAW"; TO DEFINE CERTAIN TERMS AS USED IN THE ACT; TO PRESCRIBE THE ACT'S APPLICABILITY AND RELATION TO OTHER LAWS; TO PROVIDE FOR THE SUSPENSION OF THE ACT'S PROVISIONS WHEN NECESSARY TO AVOID LOSS OF FEDERAL FUNDS OR SERVICES; TO PRESCRIBE HOW RIGHTS UNDER THE ACT MAY BE WAIVED, HOW MATTERS MAY BE SETTLED INFORMALLY UNDER THE ACT AND HOW PROCEEDINGS UNDER THE ACT MAY BE CONVERTED TO ANOTHER TYPE OF AGENCY PROCEEDING; TO PRESCRIBE THE MANNER OF SERVICE AND COMPUTATION OF TIME UNDER THE ACT; TO PROVIDE FOR THE PUBLICATION, COMPILATION, INDEXING AND PUBLIC INSPECTION OF AGENCY RULES AND ORDERS; TO ESTABLISH A RIGHT AND PRESCRIBE THE PROCEDURE FOR REQUESTING DECLARATORY OPINIONS FROM STATE AGENCIES WITH REGARD TO THE APPLICABILITY AND EFFECT OF AGENCY RULES; TO REQUIRE EVERY AGENCY TO ADOPT CERTAIN RULES RELATING TO THE AGENCY'S ORGANIZATIONAL STRUCTURE; TO REQUIRE THE SECRETARY OF STATE TO ADOPT MODEL RULES OF PROCEDURE FOR USE BY STATE AGENCIES; TO PROVIDE FOR NOTICE OF PROPOSED RULES BEFORE THEIR ADOPTION; TO ALLOW PUBLIC PARTICIPATION IN THE RULE-MAKING PROCESS; TO PROVIDE FOR A PUBLIC RULE-MAKING DOCKET; TO REQUIRE SUBMISSION OF A REGULATORY ANALYSIS OF PROPOSED RULES IN CERTAIN SITUATIONS; TO PROVIDE FOR THE TIME AND MANNER OF RULE ADOPTION; TO PROHIBIT ANY VARIANCE BETWEEN AN ADOPTED RULE AND PUBLISHED NOTICE OF THE RULE'S ADOPTION; TO EXEMPT CERTAIN RULES FROM PROCEDURES PROVIDED IN THE ACT; TO PRESCRIBE THE CONTENTS, STYLE AND FORM OF RULES; TO REQUIRE AGENCIES TO MAINTAIN A RULE-MAKING RECORD AND TO FILE RULES IN THE OFFICE OF THE SECRETARY OF STATE; TO PRESCRIBE THE METHOD FOR CONTESTING THE VALIDITY OF RULES; TO PROVIDE FOR THE EFFECTIVE DATE OF RULES; TO PROVIDE THAT THE ACT SHALL BE INAPPLICABLE TO CERTAIN CLASSES OF RULES; TO AUTHORIZE PETITIONS FOR THE ADOPTION, AMENDMENT, REPEAL OR WAIVER OF A RULE; TO REQUIRE EACH AGENCY TO PERIODICALLY REVIEW ITS RULES; TO PRESCRIBE WHEN ADJUDICATIVE PROCEEDINGS ARE REQUIRED, AND WHEN COMMENCED; TO CREATE EXCEPTIONS; TO ESTABLISH TIME LIMITS; TO REQUIRE A LICENSEE TO BE GIVEN NOTICE OF ANY INTENDED REVOCATION, SUSPENSION, ANNULMENT OR WITHDRAWAL OF HIS LICENSE EXCEPT IN CASE OF EMERGENCY; TO PROVIDE FOR INFORMAL SETTLEMENT, ALTERNATIVE DISPUTE RESOLUTION AND WAIVER; TO PRESCRIBE THE REQUIREMENTS FOR A FORMAL ADJUDICATIVE HEARING, THE PRESIDING OFFICER AND REPRESENTATION; TO PROVIDE FOR THE AVAILABILITY OF A PREHEARING CONFERENCE, NOTICE THEREOF AND PROCEDURE THEREFOR; TO PRESCRIBE RULES OF PROCEDURE; TO PROVIDE FOR REVIEW; TO CREATE THE DIVISION OF INDEPENDENT HEARING OFFICERS; TO PROVIDE FOR INFORMAL ADJUDICATIVE HEARINGS AND PRESCRIBE RULES OF PROCEDURE; TO PRESCRIBE WHEN BASIC ADJUDICATIVE PROCEEDING IS SUFFICIENT AND TO PROVIDE RULES OF PROCEDURE THEREFOR, APPEAL THEREFROM, AND FOR ADMINISTRATIVE REVIEW; TO PROVIDE FOR EMERGENCY ADJUDICATIVE PROCEEDINGS; TO PROVIDE FOR JUDICIAL REVIEW; TO PRESCRIBE RELIEF THAT MAY BE GRANTED; TO PROVIDE FOR CIVIL ENFORCEMENT; TO PROVIDE THAT STATUTORY PROVISIONS THAT CONFLICT WITH THE PROVISIONS OF THIS ACT SHALL GOVERN TO THE EXTENT OF SUCH CONFLICT; TO PRESCRIBE THE

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

ARTICLE I

GENERAL PROVISIONS

SECTION 1. The following shall be codified as Section 25-43-1.101, Mississippi Code of 1972:

25-43-1.101. Title; Statement of Purpose.

1. This chapter may be cited as the "Mississippi Administrative Procedures Law."

2. This chapter is intended to provide a minimum procedural code for the operation of all state agencies when they take action affecting the rights and duties of the public. Nothing in this chapter shall be construed as invalidating any rule or regulation adopted before July 1, 2003, if such rule or regulation was
properly adopted in accordance with the law as it existed at the
time of adoption. Nothing in this chapter is meant to discourage
agencies from adopting procedures providing greater protections to
the public or conferring additional rights upon the public; and
save for express provisions of this chapter to the contrary,
nothing in this chapter is meant to abrogate in whole or in part
any statute prescribing procedural duties for an agency which are
greater than or in addition to those provided here. This chapter
is meant to apply to all rule-making and adjudicative proceedings
and all suits for the judicial review of agency action that are
not specifically excluded from this chapter or some portion
thereof by its express terms or by the express terms of another
chapter.

The purposes of the Mississippi Administrative Procedures Law
are: To provide legislative oversight of powers and duties
delegated to administrative agencies; to increase public
accountability of administrative agencies; to simplify government
by assuring a uniform minimum procedure to which all agencies will
be held in the conduct of their most important functions; to
increase public access to governmental information; to increase
public participation in the formulation of administrative rules;
to increase the fairness of agencies in their conduct of contested
case proceedings; and to simplify the process of judicial review
of agency action as well as increase its ease and availability.
In accomplishing its objectives, the intention of this chapter is
to strike a fair balance between these purposes and the need for
efficient, economical and effective government administration.
The chapter is not meant to alter the substantive rights of any
person or agency. Its impact is limited to procedural rights with
the expectation that better substantive results will be achieved
in the everyday conduct of state government by improving the
process by which those results are attained.

(3) From and after July 1, 2003, any reference to the
Mississippi Administrative Procedure Act, the Mississippi Administrative Procedures Act, the Mississippi Administrative Procedure Law, or the Mississippi Administrative Procedures Law, being Sections 25-43-1, et seq., Mississippi Code of 1972, shall be deemed to mean and refer to this chapter.

SECTION 2. The following shall be codified as Section 25-43-1.102, Mississippi Code of 1972:

25-43-1.102. Definitions.

As used in this chapter the following terms shall have the meanings ascribed to them in this section unless the context otherwise requires:

(a) "Adjudicative Proceeding" means an agency proceeding conducted for the purpose of formulating and issuing an order which determines the rights of one or more persons. A "basic adjudicative proceeding" is an adjudicative proceeding conducted in accordance with the provisions of Sections 25-43-4.501 through 25-43-4.505. An "emergency adjudicative proceeding" is an adjudicative proceeding conducted in accordance with the provisions of Section 25-43-4.601. A "formal adjudicative hearing" is an adjudicative proceeding conducted in accordance with the provisions of Section 25-43-4.201 through 25-43-4.222. An "informal adjudicative hearing" is an adjudicative proceeding conducted in accordance with the provisions of Section 25-43-4.401 through 25-43-4.403.

(b) "Agency" means a board, commission, department, officer or other administrative unit of this state, including the agency head, and one or more members of the agency head or agency employees directly or indirectly purporting to act on behalf or under the authority of the agency head. The term does not include the Legislature or any of its component units, the judiciary or any of its component units or the Governor. The term does not include a political subdivision of the state or any of the administrative units of a political subdivision. To the extent it
purports to exercise authority subject to any provision of this chapter, an administrative unit otherwise qualifying as an "agency" must be treated as a separate agency even if the unit is located within or subordinate to another agency.

(c) "Agency action" means: (i) the whole or a part of a rule, an order or a declaratory opinion; or (ii) the failure to issue a rule, an order, or a declaratory opinion. "Nonfinal agency action" means the whole or a part of any agency determination, investigation, proceeding, hearing, conference, or other process that is preliminary, preparatory, procedural, or intermediate with regard to subsequent agency action of that agency or another agency. "Final agency action" means the whole or a part of any agency action other than nonfinal agency action. Final agency action occurs when the action is reduced to writing and approved by the agency head.

(d) "Agency head" or "head of the agency" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law.

(e) "Agency proceeding" or "proceeding" means the process by which an agency considers:

   (i) A declaratory opinion pursuant to Section 25-43-2.103,

   (ii) A rule pursuant to Article III of this chapter, or

   (iii) Any form of adjudicative proceeding pursuant to Article IV of this chapter.

(f) "Agency record" means the official record of an agency adjudicative proceeding pursuant to Section 25-43-4.222 and the official rule-making record of an agency pursuant to Section 25-43-3.112.

(g) "Basic adjudicative proceeding" is an adjudicative proceeding conducted in accordance with the provisions of Sections 25-43-4.501 through 25-43-4.505.
(h) "Declaratory opinion" means an agency opinion rendered in accordance with the provisions of Section 25-43-2.103.

(i) "Emergency adjudicative proceeding" is an adjudicative proceeding conducted in accordance with the provisions of Section 25-43-4.601.

(j) "Final agency action" means the whole or a part of any agency action other than nonfinal agency action. Final agency action occurs when the action is reduced to writing and approved by the agency head.

(k) "Formal adjudicative hearing" is an adjudicative proceeding conducted in accordance with the provisions of Section 25-43-4.201 through 25-43-4.222.

(l) "Informal adjudicative hearing" is an adjudicative proceeding conducted in accordance with the provisions of Section 25-43-4.401 through 25-43-4.403.

(m) "License" means a franchise, permit, certification, approval, registration, charter or similar form of authorization required by law. The holder of a "license" may be referred to as a "licensee," "permittee" or "franchisee."

(n) "Nonfinal agency action" means the whole or a part of any agency determination, investigation, proceeding, hearing, conference, or other process that is preliminary, preparatory, procedural, or intermediate with regard to subsequent agency action of that agency or another agency.

(o) "Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities or other legal interests of one or more specific persons. An order shall be in writing signed by a person with authority to render the order, or if more than one (1) person has such authority by at least that number of such persons as jointly have the authority to render the order, or by a person authorized to render the order on behalf of all such persons. The term does not include an executive order issued by the Governor.
pursuant to Section 25-43-1.104, an opinion issued by the Attorney
General pursuant to Section 7-5-25, an opinion issued by the
Ethics Commission pursuant to Section 25-4-17, or a declaratory
opinion rendered in accordance with Section 25-43-2.103.

(p) "Party to agency proceedings," or "party" in a
context so indicating, means:

(i) A person to whom the agency action is
specifically directed;

(ii) A person named as a party to an agency
proceeding or allowed to intervene or participate as a party in
the proceeding; or

(iii) The agency, except where the agency is
essentially neutral regarding the outcome of the proceedings and
the agency’s primary interest is that the proceeding be fair,
speedy and cost effective.

(q) "Party to judicial review or civil enforcement
proceedings," or "party" in a context so indicating, means:

(i) A person who files a notice for judicial
review or a complaint for civil enforcement;

(ii) A person named as a party in a proceeding for
judicial review or civil enforcement or allowed to participate as
a party in the proceeding; or

(iii) The agency in a proceeding for judicial
review or civil enforcement.

(r) "Person" means an individual, partnership,
corporation, association, governmental subdivision or unit
thereof, or public or private organization or entity of any
character, and includes another agency.

(s) "Presiding officer" means a person designated as
the principal hearing officer in an adjudicative proceeding.

(t) "Provision of law" or "law" means the whole or a
part of the federal or state Constitution, or of any federal or
state (i) statute, (ii) case law or common law, (iii) rule of
court, (iv) executive order, or (v) rule or order of an administrative agency.

(u) "Public employee" means any person engaged in "state service" within the meaning and contemplation of Section 25-9-107(b) as it now reads or may hereafter be amended and excludes any person engaged in "nonstate service" within the meaning and contemplation of Section 25-9-107(c) as it now reads or may thereafter be amended.

(v) "Rule" means the whole or a part of an agency regulation or other statement of general applicability that implements, interprets, or prescribes:

(i) Law or policy, or
(ii) The organization, procedure or practice requirements of an agency. The term includes the amendment, repeal or suspension of an existing rule. "Rule" does not include:

1. A regulation or statement concerning only the internal management of an agency which does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public;

2. A regulation or statement that establishes criteria or guidelines to be used by the staff of an agency in performing audits, investigations or inspections, settling commercial disputes, negotiating commercial arrangements or in the defense, prosecution or settlement of cases, if disclosure of the criteria or guidelines would:

   a. Enable law violators to avoid detection;
   b. Facilitate disregard of requirements imposed by law; or
   c. Give a clearly improper advantage to persons who are in an adverse position to the state;

3. A regulation or statement that only
establishes specific prices to be charged for particular goods or
services sold by an agency;

4. A regulation or statement concerning only
the physical servicing, maintenance or care of agency owned or
operated facilities or property;

5. A regulation or statement relating only to
the use of a particular facility or property owned, operated or
maintained by the state or any of its subdivisions, if the
substance of the regulation or statement is adequately indicated
by means of signs or signals to persons who use the facility or
property;

6. A regulation or statement concerning only
inmates of a correctional or detention facility, students enrolled
in an educational institution or patients admitted to a hospital,
if adopted by that facility, institution or hospital;

7. A form whose contents or substantive
requirements are prescribed by rule or statute, and instructions
for the execution or use of the form;

8. An agency budget;

9. A compact or agreement between an agency
of this state and one or more agencies of another state or states;
or

10. An opinion of the Attorney General
pursuant to Section 7-5-25, an opinion of the Ethics Commission
pursuant to Section 25-4-17, or an executive order of the
Governor.

(w) "Rule making" means the process for formulation and
adoption of a rule.

SECTION 3. The following shall be codified as Section
25-43-1.103, Mississippi Code of 1972:

25-43-1.103. Applicability and Relation to Other Law.

(1) This chapter applies to all agencies and all proceedings
not expressly exempted under this chapter.
(2) This chapter creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by other statutes.

(3) Specific statutory provisions which govern agency proceedings and which are in conflict with any of the provisions of this chapter shall continue to be applied to all proceedings of any such agency to the extent of such conflict only.

(4) The provisions of this chapter 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 this act, the provisions of such other law shall govern and control.

(5) An agency may grant procedural rights to persons in addition to those conferred by this chapter so long as rights conferred upon other persons by any provision of law are not substantially prejudiced.

SECTION 4. The following shall be codified as Section 25-43-1.104, Mississippi Code of 1972:

25-43-1.104. Suspension of Chapter's Provisions When Necessary to Avoid Loss of Federal Funds or Services.

(1) To the extent necessary to avoid a denial of funds or services from the United States which would otherwise be available to the state, the Governor, by executive order, may suspend, in whole or in part, one or more provisions of this chapter. The Governor, by executive order, shall declare the termination of a suspension as soon as it is no longer necessary to prevent the loss of funds or services from the United States.

(2) If any provision of this chapter is suspended pursuant to this section, the Governor shall promptly report the suspension to the Legislature. The report may include recommendations concerning desirable legislation that may be necessary to conform this chapter to federal law, including the exemption, if appropriate, of a particular program from the provisions of this
chapter.

SECTION 5. The following shall be codified as Section 25-43-1.105, Mississippi Code of 1972:


Except to the extent precluded by another provision of law, a person may waive any right conferred upon that person by this chapter, or by any rule made pursuant to this chapter.

SECTION 6. The following shall be codified as Section 25-43-1.106, Mississippi Code of 1972:

25-43-1.106. Filings with Agency; Service; Computation of Time.

(1) (a) Whenever a presiding officer, a party or any person is permitted or required to file with an agency any application, pleading, motion or other document, filing must be made by delivery of the document to the agency, by mailing it to the agency, or by transmitting it to the agency by electronic means, including, but not limited to, facsimile transfer or e-mail.

Filing by electronic means is complete when the electronic equipment being used by the agency acknowledges receipt of the material. If the equipment used by the agency does not automatically acknowledge transmission, service is not complete until the filing party obtains an acknowledgment from the agency.

Filing by mail is complete upon receipt by the agency.

(b) The agency may implement this section by agency rule.

(2) (a) Whenever service is required by this article, and whether the service is made by a party, an agency, or a presiding officer, service of orders, notices, pleadings, motions, and other documents upon a party shall be made by delivering a copy to the party, by transmitting it to the party by electronic means, including but not limited to facsimile transfer or e-mail, or by mailing it to the party at the party’s last known address.

Delivery of a copy means handing it to a party, leaving it at the
office of a party with a person in charge thereof, or leaving it
at the dwelling house or usual place of abode of the party with
some person of suitable age and discretion then residing therein.

Service by electronic means is complete when the electronic
equipment being used by the party being served acknowledges
receipt of the material. If the equipment used by the party being
served does not automatically acknowledge the transmission,
service is not complete until the sending party obtains an
acknowledgment from the recipient. Service by mail is complete
upon mailing.

(b) Whenever service is required or permitted to be
made upon a party who is represented by an attorney of record in
the proceedings, the service shall be made upon such attorney.

(c) Whenever an agency or presiding officer issues an
order or serves a notice or other document, the order or notice or
other document shall be dated and shall be deemed to have been
issued on the day it is served on the parties to the matter. If
the order or notice or other document is to be served by mail, it
shall be dated and shall be deemed to have been issued on the day
it is mailed.

(3) (a) In computing any period of time prescribed or
allowed by this article, by order of an agency, or by any
applicable statute or agency rule, the day of the act, event or
default from which the designated period of time begins to run
shall not be included. The last day of the period so computed
shall be included, unless it is a Saturday, a Sunday, or a legal
holiday, as defined by statute, or any other day when the agency’s
office is in fact closed, whether with or without legal authority,
in which event the period runs until the end of the next day which
is not a Saturday, a Sunday, a legal holiday, or any other day
when the agency’s office is closed. When the period of time
prescribed or allowed is less than seven (7) days, intermediate
Saturdays, Sundays, and legal holidays shall be excluded in the
computation. In the event any legal holiday falls on a Sunday, the next following day shall be a legal holiday.

(b) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice, order, pleading, motion or other paper upon him and the notice or paper is served upon him by mail, three (3) days shall be added to the prescribed period.

ARTICLE II

PUBLIC ACCESS TO AGENCY LAW AND POLICY

SECTION 7. The following shall be codified as Section 25-43-2.101, Mississippi Code of 1972:


(1) Subject to the provisions of this chapter, the Secretary of State shall prescribe a uniform numbering system, form, style and transmitting format for all proposed and adopted rules caused to be published by him and, with prior approval of each respective agency involved, may edit rules for publication and codification without changing the meaning or effect of any rule.

(2) The Secretary of State shall cause an administrative bulletin to be published in a format and at such regular intervals as the Secretary of State shall prescribe by rule. Upon proper filing of proposed rules, the Secretary of State shall publish them in the administrative bulletin as expeditiously as possible.

The administrative bulletin must contain:

(a) Notices of proposed rule adoption prepared so that the text of the proposed rule shows the text of any existing rule proposed to be changed and the change proposed;

(b) Any other notices and materials designated by law for publication therein; and

(c) An index to its contents by subject.

(3) The Secretary of State shall cause an administrative bulletin to be published in a format and at such regular intervals...
as the Secretary of State shall prescribe by rule. Upon proper filing of newly adopted rules, the Secretary of State shall publish them as expeditiously as possible. The administrative bulletin must contain:

(a) Newly filed adopted rules prepared so that the text of the newly filed adopted rule shows the text of any existing rule being changed and the change being made;

(b) Any other notices and materials designated by law for publication therein; and

(c) An index to its contents by subject.

(4) The Secretary of State retains the authority to reject proposed and newly adopted rules not properly filed in accordance with the Secretary of State’s rules prescribing the numbering system, form, style or transmitting format for such filings. In addition, a filing with the Secretary of State may be rejected if it fails to comply with any of the provisions of Articles II and III of this chapter. The Secretary of State shall notify the agency of its rejection of a proposed or newly adopted rule as expeditiously as possible and accompany such notification with a stated reason for the rejection. A rejected filing of a proposed or newly adopted rule does not constitute filing pursuant to Section 25-43-3.101 et seq. of this chapter.

(5) (a) The Secretary of State shall cause an administrative code to be compiled, indexed by subject and published in a format prescribed by the Secretary of State by rule. All of the effective rules of each agency must be published and indexed in that publication. The Secretary of State shall also cause supplements to the administrative code to be published in a format and at such regular intervals as the Secretary of State shall prescribe by rule.

(b) The Secretary of State is hereby authorized to contract with a reputable and competent publishing company on such terms and conditions and at such prices as he may deem proper to
digest, compile, annotate, index and publish the state agency
rules and regulations.

(6) (a) Copyrights of the Mississippi Administrative Code, including, but not limited to, cross references, tables of cases, notes of decisions, tables of contents, indices, source notes, authority notes, numerical lists and codification guides, other than the actual text of rules or regulations, shall be taken by and in the name of the publishers of said compilation. Such publishers shall thereafter promptly assign the same to the State of Mississippi and said copyright shall be owned by the state.

(b) Any information appearing on the same leaf with the text of any rule or regulation may be incidentally reproduced in connection with the reproduction of such rule or regulation, if such reproduction is for private use and not for resale.

(7) The Secretary of State may omit from the administrative bulletin or code any proposed or filed adopted rule the publication in hard copy of which would be unduly cumbersome, expensive or otherwise inexpedient, if:

(a) Knowledge of the rule is likely to be important to only a small class of persons;

(b) On application to the issuing agency, the proposed or adopted rule in printed or processed form is made available at no more than its cost of reproduction; and

(c) The administrative bulletin or code contains a notice stating in detail the specific subject matter of the omitted proposed or adopted rule and how a copy of the omitted material may be obtained.

(8) The administrative bulletin and administrative code with supplements must be furnished to designated officials without charge and to all subscribers at a reasonable cost to be determined by the Secretary of State. Each agency shall also make available for public inspection and copying those portions of the administrative bulletin and administrative code containing all
rules adopted or used by the agency in the discharge of its functions, and the index to those rules.

SECTION 8. The following shall be codified as Section 25-43-2.102, Mississippi Code of 1972:


(1) In addition to other requirements imposed by any provision of law, and subject to any confidentiality provisions established by law, each agency shall make all written final orders available for public inspection and copying and index them by name and subject.

(2) A written final order may not be relied on as precedent by an agency to the detriment of any person until it has been made available for public inspection and indexed in the manner described in subsection (1) of this section. This provision is inapplicable to any person who has actual, timely knowledge of the order. The burden of proving that knowledge is on the agency.

SECTION 9. The following shall be codified as Section 25-43-2.103, Mississippi Code of 1972:


(1) Any person with a substantial interest in the subject matter may make a written request of an agency for a declaratory opinion as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the agency. An agency, through the agency head or its designee(s) by rule, shall issue a declaratory opinion in response to a written request for that opinion unless the agency determines that issuance of the opinion under the circumstances would be contrary to a rule adopted in accordance with subsection (2) of this section.

(2) Each agency shall issue rules that provide for: (a) the form, contents and filing of written requests for declaratory opinions; (b) the procedural rights of persons in relation to the
written requests and (c) the disposition of the written requests. Those rules must describe the classes of circumstances in which the agency will not issue a declaratory opinion.

(3) Within forty-five (45) days after receipt of a written request for a declaratory opinion an agency, in writing, shall:
   (a) Issue an opinion declaring the applicability of the statute, rule or order in question 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.

(4) A copy of all opinions issued in response to a written request for a declaratory opinion must be mailed promptly to the requesting party.

(5) (a) When any person receives a declaratory opinion from an agency and shall have stated all the facts to govern such opinion, there shall be no liability, civil or criminal, accruing to or against any such person who, in good faith, follows the direction of such opinion and acts in accordance therewith unless a court of competent jurisdiction, after a full hearing, shall judicially declare that such opinion is manifestly wrong and without any substantial support. No declaratory opinion shall be given or considered if the opinion is requested after suit is filed or prosecution begun.
   (b) The authority of persons to request and receive agency declaratory opinions in no way affects the ability of any person authorized by Section 7-5-25 to request a legal opinion from the Attorney General.
   (c) Each agency shall make all declaratory opinions available for public inspection and copying and shall index them by name and subject, unless information contained within such opinions is confidential by statute or exempt from public
disclosure pursuant to another provision of law.

SECTION 10. The following shall be codified as Section 25-43-2.104, Mississippi Code of 1972:


In addition to other rule-making requirements imposed by law, each agency shall:

(a) Adopt as a rule a description of the organization of the agency which states the general course and method of its operations and where and how the public may obtain information or make submissions or requests;

(b) Adopt rules of practice setting forth the nature and requirements of all formal and informal proceedings available to the public.

SECTION 11. The following shall be codified as Section 25-43-2.105, Mississippi Code of 1972:


In accordance with the rule-making requirements of this chapter, the Secretary of State shall adopt model rules of procedure appropriate for use by as many agencies as possible. The model rules must deal with all general functions and duties performed in common by several agencies. Each agency may adopt as much of the model rules as is practicable under its circumstances. To the extent an agency adopts the model rules, it shall do so in accordance with the rule-making requirements of this chapter.

ARTICLE III

RULE MAKING

ADOPTION AND EFFECTIVENESS OF RULES

SECTION 12. The following shall be codified as Section 25-43-3.101, Mississippi Code of 1972:


(1) In addition to seeking information by other methods, an agency, before filing of a notice of proposed rule adoption under...
Section 25-43-3.103, may solicit comments from the public on a subject matter of possible rule making under active consideration within the agency by causing notice to be filed with the Secretary of State for publication in the administrative bulletin of the subject matter and indicating where, when and how persons may comment.

(2) Each agency may also appoint committees to comment, before filing of a notice of proposed rule adoption under Section 25-43-3.103, on the subject matter of a possible rule making under active consideration within the agency. The membership of those committees must be filed with the Secretary of State for publication in the administrative bulletin.

SECTION 13. The following shall be codified as Section 25-43-3.102, Mississippi Code of 1972:


(1) Each agency shall maintain a current, public rule-making docket.

(2) The rule-making docket may, but need not, contain a listing of the subject matter of possible rules currently under active consideration within the agency for proposal under Section 25-43-3.103 and the name and address of agency personnel with whom persons may communicate with respect to the matter.

(3) The rule-making docket must list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by proper filing with the Secretary of State of a notice of proposed rule adoption, to the time it is terminated by the filing with the Secretary of State of a notice of termination or the rule becoming effective. For each pending rule-making proceeding, the docket must indicate:

(a) The subject matter of the proposed rule;

(b) A citation to all published notices relating to the proceeding;

(c) Where written submissions or written requests for a
opportunity to make oral presentations on the proposed rule may be
inspected;

(d) The time during which written submissions may be
made;
(e) If applicable, where and when oral presentations
may be made;
(f) Where any economic impact statement and written
requests for the issuance of and other information concerning an
economic impact statement of the proposed rule may be inspected;
(g) The current status of the proposed rule;
(h) The date of the rule's adoption; and
(i) When the rule will become effective.

SECTION 14. The following shall be codified as Section
25-43-3.103, Mississippi Code of 1972:


(1) At least twenty-five (25) days before the adoption of a
rule an agency shall cause notice of its contemplated action to be
properly filed with the Secretary of State for publication in the
administrative bulletin. The notice of proposed rule adoption
must include:
(a) A short explanation of the purpose of the proposed
rule and the agency’s reasons for proposing the rule;
(b) The specific legal authority authorizing the
proposed rule;
(c) A reference to all rules repealed, amended or
suspended by the proposed rule;
(d) Subject to Section 25-43-2.101(5), the text of the
proposed rule;
(e) Where, when and how persons may present their views
on the proposed rule; and
(f) Where, when and how persons may demand an oral
proceeding on the proposed rule if the notice does not already
provide for one.
Within three (3) days after its proper filing with the Secretary of State for publication in the administrative bulletin, the agency shall cause a copy of the notice of proposed rule adoption to be mailed to each person who has made a timely request to the agency to be placed on the mailing list maintained by the agency of persons who have requested notices of proposed rule adoptions. An agency may charge persons a reasonable fee for such service, which fee may be in excess of the actual cost of providing persons with mailed copies.

SECTION 15. The following shall be codified as Section 25-43-3.104, Mississippi Code of 1972:


(1) For at least twenty-five (25) days after proper filing with the Secretary of State of the notice of proposed rule adoption, an agency shall afford persons the opportunity to submit, in writing, argument, data and views on the proposed rule.

(2) (a) An agency in its discretion may schedule an oral proceeding on any proposed rule. However, an agency shall schedule an oral proceeding on a proposed rule if, within twenty (20) days after the proper filing of the notice of proposed rule adoption, a written request for an oral proceeding is submitted by a political subdivision, an agency, or twenty-five (25) persons. At that proceeding, persons may present oral or written argument, data, and views on the proposed rule.

(b) An oral proceeding on a proposed rule, if required, may not be held earlier than twenty (20) days after notice of its location and time is properly filed with the Secretary of State for publication in the administrative bulletin. Within three (3) days after its proper filing with the Secretary of State for publication in the administrative bulletin, the agency shall cause a copy of the notice of the location and time of the oral proceeding to be mailed to each person who has made a timely request to the agency to be placed on the mailing list maintained by the agency of persons who have requested notices of proposed rule adoptions.
by the agency of persons who have requested notices of proposed
rule adoptions.

(c) The agency, a member of the agency, or another
presiding officer designated by the agency shall preside at a
required oral proceeding on a proposed rule. Oral proceedings
must be open to the public and may be recorded by stenographic or
other means.

(d) An agency may issue rules for the conduct of oral
rule-making proceedings or prepare reasonable guidelines or
procedures for the conduct of any such proceedings. Those rules
may include, but not be limited to, provisions calculated to
prevent undue repetition in the oral proceedings.

SECTION 16. The following shall be codified as Section
25-43-3.105, Mississippi Code of 1972:

25-43-3.105. Economic Impact Statement, Requirement and

Conditions.

(1) Prior to giving the notice required in Section
25-43-3.103, each agency proposing the adoption of a rule or
significant amendment of an existing rule imposing a duty,
responsibility or requirement on any person shall consider the
economic impact the rule will have on the citizens of our state
and the benefits the rule will cause to accrue to those citizens.
For purposes of this section, a “significant amendment” means any
amendment to a rule for which the total aggregate cost to all
persons required to comply with that rule exceeds One Hundred
Thousand Dollars ($100,000.00).

(2) Each agency shall prepare a written report providing an
economic impact statement for the adoption of a rule or
significant amendment to an existing rule imposing a duty,
responsibility or requirement on any person, except as provided in
subsection (7) of this section. The economic impact statement
shall include the following:

(a) A description of the need for and the benefits
which will likely accrue as the result of the proposed action;

(b) An estimate of the cost to the agency, and to any
other state or local government entities, of implementing and
enforcing the proposed action, including the estimated amount of
paperwork, and any anticipated effect on state or local revenues;
(c) An estimate of the cost or economic benefit to all
persons directly affected by the proposed action;
(d) An analysis of the impact of the proposed rule on
small business;
(e) A comparison of the costs and benefits of the
proposed rule to the probable costs and benefits of not adopting
the proposed rule or significantly amending an existing rule;
(f) A determination of whether less costly methods or
less intrusive methods exist for achieving the purpose of the
proposed rule where reasonable alternative methods exist which are
not precluded by law;
(g) A description of reasonable alternative methods,
where applicable, for achieving the purpose of the proposed action
which were considered by the agency and a statement of reasons for
rejecting those alternatives in favor of the proposed rule; and
(h) A detailed statement of the data and methodology
used in making estimates required by this subsection.

(3) No rule or regulation shall be declared invalid based on
a challenge to the economic impact statement for the rule unless
the issue is raised in the agency proceeding. No person shall
have standing to challenge a rule, based upon the economic impact
statement or lack thereof, unless that person provided the agency
with information sufficient to make the agency aware of specific
concerns regarding the statement in an oral proceeding or in
written comments regarding the rule. The grounds for invalidation
of an agency action, based upon the economic impact statement, are
limited to the agency’s failure to adhere to the procedure for
preparation of the economic impact statement as provided in this
section, or the agency’s failure to consider information submitted
to the agency regarding specific concerns about the statement, if
that failure substantially impairs the fairness of the rule-making
proceeding.

(4) A concise summary of the economic impact statement must
be properly filed with the Secretary of State for publication in
the administrative bulletin and the period during which persons
may make written submissions on the proposed rule shall not expire
until at least twenty (20) days after the date of such proper
filing.

(5) The properly filed summary of the economic impact
statement must also indicate where persons may obtain copies of
the full text of the economic impact statement and where, when,
and how persons may present their views on the proposed rule and
demand an oral proceeding on the proposed rule if one is not
already provided.

(6) If the agency has made a good faith effort to comply
with the requirements of subsections (1) and (2) of this section,
the rule may not be invalidated on the ground that the contents of
the economic impact statement are insufficient or inaccurate.

(7) This section does not apply to the adoption of:

(a) Any rule which is required by the federal
government pursuant to a state/federal program delegation
agreement or contract;

(b) Any rule which is expressly required by state law;

and

(c) A temporary rule adopted pursuant to Section

25-43-3.108.

SECTION 17. The following shall be codified as Section
25-43-3.106, Mississippi Code of 1972:

25-43-3.106. Time and Manner of Rule Adoption.

(1) An agency may not adopt a rule until the period for
making written submissions and oral presentations has expired.
Following the proper filing with the Secretary of State of the notice of proposed rule adoption, an agency shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by proper filing with the Secretary of State of a notice to that effect for publication in the administrative bulletin.

Before the adoption of a rule, an agency shall consider the written submissions, oral submissions or any memorandum summarizing oral submissions, and any economic impact statement, provided for by this article.

Within the scope of its delegated authority, an agency may use its own experience, technical competence, specialized knowledge and judgment in the adoption of a rule.

SECTION 18. The following shall be codified as Section 25-43-3.107, Mississippi Code of 1972:

**Variance between Adopted Rule and Published Notice of Proposed Rule Adoption.**

(1) An agency shall not adopt a rule that differs from the rule proposed in the notice of proposed rule adoption on which the rule is based unless all of the following apply:

(a) The differences are within the scope of the matter announced in the notice of proposed rule adoption and are in character with the issues raised in that notice;

(b) The differences are a logical outgrowth of the contents of that notice of proposed rule adoption and the comments submitted in response thereto; and

(c) The notice of proposed rule adoption provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

(2) In determining whether the notice of proposed rule adoption provided fair warning that the outcome of that rule-making proceeding could be the rule in question an agency shall consider all of the following factors:
(a) The extent to which persons who will be affected by
the rule should have understood that the rule-making proceeding on
which it is based could affect their interests;

(b) The extent to which the subject matter of the rule
or issues determined by the rule are different from the subject
matter or issues contained in the notice of proposed rule
adoption; and

(c) The extent to which the effects of the rule differ
from the effects of the proposed rule contained in the notice of
proposed rule adoption.

SECTION 19. The following shall be codified as Section
25-43-3.108, Mississippi Code of 1972:

for Temporary Rules.

(1) To the extent an agency for good cause finds that any
requirements of Sections 25-43-3.103 through 25-43-3.107 are
unnecessary, impracticable or contrary to the public interest in
the process of adopting a temporary rule, those requirements do
not apply. The agency shall incorporate the required finding and
a brief statement of its supporting reasons in each temporary rule
adopted in reliance on this subsection. The supporting reasons
for the issuance of a temporary rule in accordance with this
provision may include, but are not limited to, a serious and
unforeseen threat to the public health, safety or welfare; an
impending effective date of a recent act of the Legislature of the
State of Mississippi or the United States Congress that requires
the issuance of implementing or conforming rules or regulations;
an impending effective date of a regulation recently issued by an
agency or authority of the federal government of the United States
that requires the issuance of implementing or conforming rules or
regulations; or a court order or other controlling judicial
decision that requires the issuance of implementing or conforming
rules or regulations. Unless a shorter period of time is stated
in the temporary rule, a temporary rule shall expire no later than
one hundred eighty (180) days after adoption. A temporary rule
may not be renewed after its expiration or early termination by
the agency. However, an agency may adopt a rule which is
identical or similar to a temporary rule to become effective
following the expiration or early termination of the temporary
rule, provided that the rule is adopted in accordance with the

(2) In an action contesting a temporary rule adopted under
subsection (1) of this section, the burden is upon the agency to
demonstrate that any omitted requirements of Sections 25-43-3.103
through 25-43-3.107 were impracticable, unnecessary or contrary to
the public interest in the particular circumstances involved.

SECTION 20. The following shall be codified as Section
25-43-3.109, Mississippi Code of 1972:


(1) Each rule adopted by an agency must contain the text of
the rule and:

(a) The date the agency adopted the rule;

(b) An indication of any change between the text of the
proposed rule contained in the published notice of proposed rule
adoption and the text of the rule as finally adopted, with the
reasons for any substantive change;

(c) Any changes to the information contained in the
notice of proposed rule adoption as required by subsections (a),
(b) or (c) of Section 25-43-3.103;

(d) Any findings required by any provision of law as a
prerequisite to adoption or effectiveness of the rule; and

(e) The effective date of the rule if other than that
specified in Section 25-43-3.113(1).

(2) To the extent feasible, each rule should be written in
clear and concise language understandable to persons who may be
affected by it.
(3) An agency may incorporate, by reference in its rules and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation that has been adopted by an agency of the United States or of this state, another state or by a nationally recognized organization or association, if incorporation of its text in agency rules would be unduly cumbersome, expensive or otherwise inexpedient. The reference in the agency rules must fully identify the incorporated matter with an appropriate citation. An agency may incorporate by reference such matter in its rules only if the agency, organization or association originally issuing that matter makes copies of it readily available to the public. The rules must state if copies of the incorporated matter are available from the agency issuing the rule or where copies of the incorporated matter are available from the agency of the United States, this state, another state or the organization or association originally issuing that matter.

(4) In preparing its rules pursuant to this article, each agency shall follow the uniform numbering system, form and style prescribed by the Secretary of State.

SECTION 21. The following shall be codified as Section 25-43-3.110, Mississippi Code of 1972:


(1) An agency shall maintain an official rule-making record for each rule it (a) proposes, or (b) adopts. The agency has the exclusive authority to prepare and exclusive authority to certify the record or any part thereof, including, but not limited to, any transcript of the proceedings, and the agency's certificate shall be accepted by the court and by any other agency. The record must be available for public inspection.

(2) The agency rule-making record must contain:

(a) Copies of all notices of proposed rule making or oral proceedings or other publications in the administrative bulletin with respect to the rule or the proceeding upon which the
rule is based;
(b) Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;
(c) All written petitions, requests, submissions and comments received by the agency and all other written materials considered by the agency in connection with the formulation, proposal or adoption of the rule or the proceeding upon which the rule is based;
(d) Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by a presiding official summarizing the contents of those presentations. The word "transcript" includes a written transcript, a printed transcript, an audible audiotape or videotape that is indexed and annotated so that it is readily accessible and any other means that the agency may have by rule provided for the reliable and accessible preservation of the proceeding;
(e) A copy of any economic impact statement prepared for the proceeding upon which the rule is based;
(f) A copy of the rule and related information set out in Section 25-43-3.109 as filed in the Office of the Secretary of State; and
(g) All petitions for exceptions to, amendments of, or repeal or suspension of, the rule.
(3) The agency shall have authority to engage such persons and acquire such equipment as may be reasonably necessary to record and preserve in any technically and practicably feasible manner all matters and all proceedings had at any rule-making proceeding.
(4) Upon judicial review, the record required by this section constitutes the official agency rule-making record with
respect to a rule. Except as otherwise required by a provision of law, the agency rule-making record need not constitute the exclusive basis for agency action on that rule or for judicial review thereof.

SECTION 22. The following shall be codified as Section 25-43-3.111, Mississippi Code of 1972:

**25-43-3.111. Invalidity of Rules Not Adopted According to Article; Time Limitation.**

(1) A rule adopted after July 1, 2000, is invalid unless adopted in substantial compliance with the provisions of Sections 25-43-3.102 through 25-43-3.110. Inadvertent failure to mail a notice of proposed rule adoption to any person as required by Section 24-43-3.103(2) does not invalidate a rule.

(2) An action to contest the validity of a rule on the grounds of its noncompliance with any provision of Sections 25-43-3.102 through 25-43-3.110 must be commenced within one (1) year after the effective date of the rule.

SECTION 23. The following shall be codified as Section 25-43-3.112, Mississippi Code of 1972:

**25-43-3.112. Filing of Rules.**

An agency shall file in the Office of the Secretary of State each rule it adopts and all rules existing on July 1, 2000, that have not previously been filed. The filing must be done as soon after adoption of the rule as is practicable. At the time of filing, each rule adopted after July 1, 2000, must have included in or attached to it the material set out in Section 25-43-3.109. The Secretary of State shall affix to each rule and statement a certification of the date of filing and keep a permanent register open to public inspection of all filed rules and attached material. In filing a rule, each agency shall use a standard format prescribed by the Secretary of State.

SECTION 24. The following shall be codified as Section 25-43-3.113, Mississippi Code of 1972:
25-43-3.113. Effective Date of Rules.

(1) Except to the extent subsection (2) or (3) of this section provides otherwise, each rule adopted after July 1, 2000, becomes effective thirty (30) days after its proper filing in the Office of the Secretary of State.

(2) (a) A rule becomes effective on a date later than that established by subsection (1) of this section if a later date is required by another statute or specified in the rule.

(b) A rule may become effective immediately upon its filing or on any subsequent date earlier than that established by subsection (1) of this section if the agency establishes such an effective date and finds that:

(i) It is required by constitution, statute or court order;

(ii) The rule only confers a benefit or removes a restriction on the public or some segment thereof;

(iii) The rule only delays the effective date of another rule that is not yet effective; or

(iv) The earlier effective date is necessary because of imminent peril to the public health, safety or welfare.

(c) The finding and a brief statement of the reasons required by paragraph (b) of this subsection must be made a part of the rule. In any action contesting the effective date of a rule made effective under paragraph (b) of this subsection, the burden is on the agency to justify its finding.

(d) A temporary rule may become effective immediately upon its filing or on any subsequent date earlier than that established by subsection (1) of this section.

(e) Each agency shall make a reasonable effort to make known to persons who may be affected by it a rule made effective before any date established by subsection (1) of this section.

(3) This section does 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.

SECTION 25. The following shall be codified as Section 25-43-3.114, Mississippi Code of 1972:


At least every five (5) years, each agency shall review all of its rules to determine whether any rule should be repealed, amended or a new rule adopted.

ARTICLE IV

ADJUDICATIVE PROCEEDINGS

PART I

AVAILABILITY OF ADJUDICATIVE PROCEEDINGS;
APPLICATIONS; LICENSES

SECTION 26. The following shall be codified as Section 25-43-4.101, Mississippi Code of 1972:


Exceptions.

(1) An agency shall conduct an adjudicative proceeding as the process for formulating and issuing an order, unless the order is a decision:

(a) To issue or not to issue a complaint, demand, charge of violation or other obligation, summons, assessment or similar accusation subject to administrative review;

(b) To initiate or not to initiate an investigation, prosecution, or other proceeding before the agency, another agency, or a court;

(c) Under Section 25-43-4.103, not to conduct an adjudicative proceeding;

(d) To issue notice of intent to take agency action;

(e) To issue a license where by law the applicant is entitled to an adjudicative proceeding if the license is denied, or where after issuance of the license by law there is provided an opportunity for an adjudicative proceeding upon application of an
interested person;

(f) To take an agency action where after the agency action is taken by law there is provided an opportunity for the person affected for an adjudicative proceeding before the Mississippi Employee Appeals Board;

(g) To issue an order granting the request of the agency staff which may take effect only upon authorization by the agency head;

(h) To take an action with respect to a prisoner, student, public employee or a licensee without continuing or permanent impact thereafter, such as a reprimand, warning, disciplinary report or purely verbal sanction without continuing impact;

(i) To take an action with respect to a student that is not a suspension or expulsion from school or does not affect a grade or academic credit to which the student would otherwise be entitled;

(j) To open or close a season for hunting or fishing, or to set limits for kill or catch;

(k) To restrict access to levees protecting against rivers at flood stage;

(l) Under Sections 93-11-155 et seq., to suspend a state-issued license;

(m) To acquire, administer or dispose of interests in real or personal property, except where by another provision of law a party with standing may complain of agency action; or

(n) To take action in a nonregulatory matter which is in the normal scope of business of the agency, including entering into contracts or agreements with any other state or federal agency, or with any private person, organization or group capable of contracting, if it finds such action to be in the public interest, except where by another provision of law a party with standing may complain of agency action; to accept gifts, trusts,
bequests, grants, endowments or transfers of property of any kind; to receive monies coming to it by way of fees for services or by appropriations; to employ, qualified professional personnel, and such other technical and clerical staff as may be required for the operation of the agency.

(2) This article does not apply to rule-making proceedings unless a statute other than contained in this chapter expressly so requires.

(3) This article does not apply to a public hearing held by an agency where the principal purpose of such hearing is to invite the public to appear and receive information or provide comment on a proposed agency action.

(4) This article provides minimum standards for adjudicative proceedings. Nothing in this article provides that an agency may not employ additional procedures as may be required or permitted by other law, including valid agency rules that the agency may make, so long as the rights conferred by this article are not prejudiced.

(5) Except as provided otherwise in this chapter or another provision of law, an agency may conduct an adjudicative proceeding as the process for resolving any matter within the jurisdiction of the agency. If an agency commences an adjudicative proceeding in any matter, that proceeding shall be governed by this article unless the parties agree otherwise.

(6) In the case of an agency that is subject to the regulatory requirements of an agency or department of the United States, an adjudicative proceeding conducted by the state agency that conforms to the requirements of the agency or department of the United States that the state agency is mandated to follow may, at the election of the state agency made in advance of the proceeding, be deemed to satisfy the requirements of this article respecting adjudicative proceedings, provided that any adjudicative proceeding so conducted shall conform to the
provisions of this article that are not materially inconsistent
with or substantially duplicative of the requirements of the
agency or department of the United States. Any agency may
implement the provisions of this section by rule. The final order
of the state agency is any proceeding conducted under this
subsection shall be subject to judicial review in accordance with
Article V, Part I of this act.

SECTION 27. The following shall be codified as Section
25-43-4.102, Mississippi Code of 1972:


(1) An agency may commence an adjudicative proceeding at any
time with respect to a matter within the jurisdiction of the
agency.

(2) An agency shall commence an adjudicative proceeding upon
the application of any person responding to a complaint, demand,
denial of a benefit, notice of agency action affecting that
person, charge of violation or other obligation, summons,
assessment or similar accusation served on that person by the
agency.

(3) In addition to its obligations provided in paragraph
(b), an agency shall commence an adjudicative proceeding upon the
application of any person, unless:

(a) The agency lacks jurisdiction of the subject
matter;

(b) Resolution of the matter requires the agency to
exercise discretion within the scope of Section 25-43-4.101(1),
subject to the provision of subsection (2) of this section;

(c) The Constitution or a statute vests the agency with
discretion to conduct or not to conduct an adjudicative proceeding
before issuing an order to resolve the matter and, in the exercise
of that discretion, the agency has determined not to conduct an
adjudicative proceeding;

(d) Resolution of the matter will not require the
agency to issue an order that may adjudge the applicant's legal
rights, duties, privileges, immunities, or other legal interests;
(e) The applicant claims only (i) that he is a citizen, a voter, or a taxpayer, or (ii) that he has an interest that the law be enforced, and nothing more;
(f) The matter was not timely submitted to the agency;
or
(g) The matter was not submitted in a form substantially complying with any applicable provision of law, and was not amended within a reasonable time so that it substantially complies with any applicable provision of law. Any timely amendment relates back to the date of the original application.
(4) (a) An application for an agency to issue an order is deemed to include an application for the agency to conduct appropriate adjudicative proceedings, whether or not the applicant expressly requests those proceedings.
(b) An application for an agency to conduct an adjudicative proceeding shall be deemed to include an application for the agency to issue an appropriate order, whether or not the applicant expressly requests the agency to issue an order.
(5) An adjudicative proceeding commences when the agency:
(a) Serves notice on a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted; or
(b) Begins to take action on a matter that appropriately may be determined by an adjudicative proceeding, unless the action is:
(i) An investigation for the purpose of determining whether an adjudicative proceeding should be conducted; or
(ii) A decision which, under Section 25-43-4.101(1), the agency may make without conducting an adjudicative proceeding.
SECTION 28. The following shall be codified as Section 25-43-4.103, Mississippi Code of 1972:

25-43-4.103. Decision Not to Conduct Adjudicative Proceeding.

If an agency decides not to conduct an adjudicative proceeding in response to an application, the agency shall serve on any applicant therefor a copy of its decision in writing, with a brief statement of the agency's reasons and of any administrative review available to the applicant.

SECTION 29. The following shall be codified as Section 25-43-4.104, Mississippi Code of 1972:


(1) Except to the extent that the time limits in this subsection are inconsistent with limits established by another statute for any stage of a proceeding, an agency shall process an application for an order, as follows:

(a) Within thirty (30) days after receipt of the application, the agency shall examine the application, notify the applicant of any apparent errors or omissions, request any additional information the agency wishes to obtain and is permitted by law to require, and notify the applicant of the name, official title, mailing address and telephone number of an agency member or employee who may be contacted regarding the status of the application or other procedural information relating to the matter.

(b) Any timely response the applicant makes to a timely request made by the agency pursuant to paragraph (a) shall relate back to the date of the original application.

(c) Except in situations governed by paragraph (d), within and no later than ninety (90) days after receipt of the application or of a response to a timely request made by the agency pursuant to paragraph (a), whichever is later, the agency shall:
(i) Approve or deny the application, in whole or in part, on the basis of emergency or basic adjudicative proceedings, if those proceedings are available under this chapter for disposition of the matter;

(ii) Commence a formal adjudicative hearing or an informal adjudicative hearing in accordance with this chapter; or

(iii) Dispose of the application in accordance with Section 25-43-4.103.

(d) If the application pertains to subject matter that is not available when the application is filed but may be available in the future, the agency may proceed to make a determination of eligibility within the time provided in paragraph (c) of this subsection. If the agency determines that the applicant is eligible, the agency shall maintain the application on the agency's list of eligible applicants as provided by law and, upon request, shall notify the applicant of the status of the application.

(2) If a timely and sufficient application has been made for renewal of a license with reference to any activity of a continuing nature, and if at the time of the application, the license is held by applicant in good standing, the existing license does not expire until the agency has taken final action upon the application for renewal or, if the agency's action is unfavorable, until the last day for seeking judicial review of the agency's action or a later date fixed by the court.

SECTION 30. The following shall be codified as Section 25-43-4.105, Mississippi Code of 1972:


An agency may not revoke, suspend, modify, annul, withdraw, or amend a license unless the agency first serves notice of the anticipated action on the licensee and affords a reasonable opportunity for an appropriate adjudicative proceeding in accordance with this chapter and any other applicable statute.
This section does not preclude an agency from (1) taking immediate action to protect the public interest in accordance with Section 25-43-4.601 or (2) adopting rules otherwise within the scope of its authority, pertaining to a class of licensees, including rules affecting the existing licenses of a class of licensees.

SECTION 31. The following shall be codified as Section 25-43-4.106, Mississippi Code of 1972:

25-43-4.106. Informal Settlements; Alternative Dispute Resolution; Waiver.

(1) Unless precluded by statute, parties are encouraged to consider settlement, including the entry of a consent order, in a matter that may lead to adjudicative proceedings according to the provisions of this article. Unless precluded by statute, agencies may make rules that may regulate and facilitate settlements of matters prior to the commencement of and in the course of adjudicative proceedings. This subsection shall not be construed to require any party to an adjudicative proceeding to utilize any such settlement procedures or to settle the matter.

(2) Unless precluded by statute, parties are encouraged to consider alternative dispute resolution as a means that may resolve a matter that may lead to adjudicative proceedings. Unless precluded by statute, agencies may make rules that may regulate and facilitate alternative dispute resolution of matters prior to the commencement of or in the course of adjudicative proceedings. This subsection shall not be construed to require any party to utilize alternative dispute resolution.

(3) Unless precluded by statute, the parties to an adjudicative proceeding may, by written instrument manifesting an informed consent and agreement, enter a consent order resolving all or part of an adjudicative proceeding.

(4) Unless precluded by statute, the parties to an adjudicative proceeding may, by written stipulation manifesting an informed consent and agreement, waive any provision of this
article relating to such proceeding.

PART II

FORMAL ADJUDICATIVE HEARING

SECTION 32. The following shall be codified as Section 25-43-4.201, Mississippi Code of 1972:


An adjudicative proceeding is governed by this part, except as otherwise provided by:

(a) A statute other than one contained in this chapter;
(b) A rule lawfully made pursuant to such statute, where such rule is not inconsistent with the standards in this chapter or an applicable statute other than one contained in this chapter;
(c) A rule that adopts the procedures for the informal adjudicative hearing or basic adjudicative proceeding in accordance with the standards provided in this chapter for those proceedings;
(d) Section 25-43-4.601 pertaining to emergency adjudicative proceedings; or
(e) Section 25-43-2.103 pertaining to proceedings for declaratory opinions.

SECTION 33. The following shall be codified as Section 25-43-4.202, Mississippi Code of 1972:


Substitution.

(1) "Presiding officer" means a person or persons acting in accordance with this section.

(2) The agency head, one or more members of the agency head, one or more hearing officers or administrative judges employed or appointed by the agency, or one or more hearing officers assigned by the Division of Independent Hearing Officers in accordance with Section 25-43-4.301, or any combination thereof, in the discretion of the agency head, may be the presiding officer.
(3) Ordinarily, the presiding officer should be, but is not required to be a person or persons assigned by the Division of Independent Hearing Officers:

(a) Unless the agency head is the presiding officer, or
(b) Unless the agency is essentially neutral regarding the outcome of the proceeding and the agency’s primary interest is that the proceeding be fair, speedy and cost-effective; provided, however, that nothing in this article shall prohibit any agency from using hearing officers who may be employed or appointed by the agency. Hearing officers utilized by the agency who are not employed or otherwise engaged by the division shall have the same qualifications as those engaged by the division.

(4) Any person serving or designated to serve alone or with others as presiding officer is subject to disqualification for bias, prejudice, interest, or any other cause provided in this chapter or for which a judge is or may be disqualified in a civil action.

(5) Any party may move to disqualify a person promptly after receipt of notice indicating that the person will preside or promptly upon discovering facts establishing grounds for disqualification, whichever is later.

(6) A person whose disqualification is requested shall determine whether to grant the motion, stating facts and reasons for the determination.

(7) If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, the substitute may be appointed as provided in subsections (2) and (3) of this section.

(8) Any action taken by a duly-appointed substitute for a disqualified or unavailable person is as effective as if taken by the latter.

SECTION 34. The following shall be codified as Section 25-43-4.203, Mississippi Code of 1972:
25-43-4.203. **Representation.**

(1) Any party may participate in the hearing in person or, if the party is a corporation or other artificial person, by its duly authorized representative.

(2) Whether or not participating in person, any party may be advised and represented at the party’s own expense by a lawyer or, except as limited but not prohibited by agency rule, by any other representative. The agency may implement this subsection by rule designating the qualifications of representative(s) that may appear on behalf of a party and what binding effect the actions of the representative(s) will have on the party so represented.

(3) Any application, pleading, or other document prepared by a lawyer or other representative of a party shall contain the typed or printed name, mailing address (including fax number and e-mail address, if available), and telephone number of the preparer.

SECTION 35. The following shall be codified as Section 25-43-4.204, Mississippi Code of 1972:

25-43-4.204. **Prehearing Conference – Availability; Notice.**

(1) Any party may request a prehearing conference. In response to a request by a party, or on the presiding officer’s own motion, the presiding officer may determine, subject to any applicable agency rules, that a prehearing conference will be conducted.

(2) If the prehearing conference is to be conducted:

(a) The presiding officer shall promptly notify the agency that a prehearing conference will be conducted. The presiding officer shall conduct the prehearing conference except as provided by agency rule or unless that presiding officer is disqualified or becomes unavailable for any other reason.

(b) The presiding officer shall set the time and place of the prehearing conference, subject to any applicable agency rules, and direct the agency to serve notice of the prehearing
conference to all parties and to all persons who have motions to intervene pending in the matter. The agency shall also serve notice to other persons entitled to notice under any provision of law or agency rule.

(c) The notice must include:

(i) The official agency file or other reference number and the style of the proceeding;

(ii) A statement of the time, place, and nature of the prehearing conference;

(iii) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(iv) The name, official title, and mailing address of the presiding officer for the prehearing conference;

(v) The name, official title, and mailing address (including fax number and e-mail address, if available) of any counsel or employee who has been designated to appear for the agency;

(vi) The names and mailing addresses of all parties and other persons to whom notice is being given;

(vii) The name, official title, mailing address (including fax number and e-mail address, if available), and telephone number of the agency employee or other person who may be able to answer procedural questions about the prehearing conference;

(viii) A statement that at the prehearing conference the proceeding, without further notice, may be converted into an informal adjudicative hearing or basic adjudicative proceeding for disposition of the matter as provided by this chapter; and

(ix) A statement with an explanation of its consequences that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of an adjudicative proceeding may be held in default under this chapter.
(d) The notice may include any other matters that the presiding officer considers desirable to expedite the proceedings, subject to any applicable provision of law including agency rules.

SECTION 36. The following shall be codified as Section 25-43-4.205, Mississippi Code of 1972:

25-43-4.205. Prehearing Conference — Procedure; Prehearing Order.

(1) The presiding officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the prehearing conference has an opportunity to participate in, to hear, and, if technically and practicably feasible, to see the entire proceeding while it is taking place.

(2) Any matters respecting the fair, speedy and cost-effective determination of the issues may be considered at the prehearing conference, including without limitation such matters as:

(a) Conversion of the proceeding to another type;
(b) Use of alternative dispute resolution;
(c) Whether there are other persons to be joined if feasible;
(d) Any motions, petitions or other applications;
(e) Exploration of settlement possibilities;
(f) Preparation of stipulations;
(g) Clarification of issues;
(h) Identity and limitation of the number of witnesses;
(i) Identity and authenticity of exhibits;
(j) Objections to proffers of evidence;
(k) Determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form;
(l) Determination of the extent to which telephone, television, or other electronic means may be used to conduct the
hearing as a substitute for proceedings in person;

(m) Order of presentation of evidence and cross-examination;

(n) Rulings regarding issuance of subpoenas;

(o) Matters regarding discovery, the adequacy of responses to discovery, orders compelling discovery, or protective orders as may be appropriate; and

(p) Such other matters as may aid in the conduct of the proceeding or the disposition of the matter.

(3) If a prehearing conference is held, the presiding officer shall issue a prehearing order incorporating and memorializing the matters determined at the prehearing conference.

The presiding officer may require that the agency and the parties assist in preparing the prehearing order.

(4) If a prehearing conference is not held, the presiding officer may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

(5) Whether a prehearing conference is held or not, the presiding officer, subject to any applicable agency rules, may require the parties, jointly or severally, to prepare a prehearing statement or order addressing such matters as set out in subsection (2) of this section. Any prehearing statement shall be included within “prehearing order” for purposes of this article.

SECTION 37. The following shall be codified as Section 25-43-4.206, Mississippi Code of 1972:


(1) The presiding officer for the hearing shall set the time and place of the hearing, subject to any applicable agency rules, and direct the agency to serve notice of the hearing on all parties, all persons who have written motions to intervene pending in the matter, and any other person entitled to notice under any provision of law.

(2) The notice may include a copy of any prehearing order
issued in the matter.

(3) To the extent not included in a prehearing order accompanying it, the notice must include:

(a) The official agency file or other reference number and the style of the proceeding;

(b) A statement of the time, place, and nature of the hearing;

(c) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(d) The name, official title, and mailing address of the presiding officer;

(e) The name, official title, mailing address (including fax number and e-mail address, if available) and telephone number of any counsel or employee who has been designated to appear for the agency;

(f) The names and mailing addresses of all parties and other persons to whom notice is being given;

(g) The name, official title, mailing address (including fax number and e-mail address, if available) and telephone number of the agency employee(s) or other person who may be able to answer procedural questions about the hearing;

(h) A statement with an explanation of its consequences that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of an adjudicative proceeding may be held in default.

(4) The notice may include any other matters the agency or presiding officer considers appropriate to expedite and facilitate the proceedings.

SECTION 38. The following shall be codified as Section 25-43-4.207, Mississippi Code of 1972:

25-43-4.207. Pleadings; Briefs; Motions.

(1) The presiding officer, at all stages of the proceedings, and subject to any applicable provision of law, including agency
rules, shall give all parties fair opportunity to file pleadings, and amendments thereto, motions, responses, objections, and other statements of position as may be required by agency rule. A timely amendment to a pleading relates back to the date of the original pleading.

(2) The presiding officer, at appropriate stages of the proceedings, and subject to any applicable provision of law, including agency rules, may give all parties fair opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed initial or final orders.

(3) A party shall serve copies of any pleading, motion, brief or other paper that the party files in the proceeding on all other parties by any means provided in this chapter and, in addition, by any means provided by agency rule.

SECTION 39. The following shall be codified as Section 25-43-4.208, Mississippi Code of 1972:


(1) If a party fails to attend or participate in a duly noticed prehearing conference, hearing, or other stage of a formal adjudicative proceeding, the presiding officer may serve upon all parties written notice of a proposed default order, including a statement of the grounds, or, if the presiding officer so directs, the agency must serve such proposed default order.

(2) Within ten (10) days after service of a proposed default order, the party against whom it is proposed to be issued may object in writing to the issuance of the proposed default order and state the grounds of the objection. During the time within which a party may file a written objection under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order may be issued, having due regard for the interests of justice and fairness and the orderly and prompt conduct of the proceedings.
(3) The presiding officer shall either issue or deny the default order promptly after expiration of the time within which the party may object under subsection (2) of this section.

(4) After issuing a default order, the presiding officer shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the proceeding, including those affecting the defaulting party. The presiding officer may allow the defaulting party to participate in the proceeding subject to the terms and conditions of the default order.

SECTION 40. The following shall be codified as Section 25-43-4.209, Mississippi Code of 1972:


(1) Subject to any applicable provision of law or agency rule, the presiding officer shall grant a motion to intervene in an adjudicative proceeding if the motion is filed with the agency, with copies served on all parties named in the official notice of the hearing, at least ten (10) days before the hearing, or, for good cause and having due regard for the interests of the agency and the parties, less than ten (10) days before the hearing; and

(a) The motion states facts demonstrating that the movant’s legal rights, duties, privileges, immunities, or other legal interests may be affected by the outcome of the proceeding or that the movant qualifies as an intervener under any provision of law; or

(b) The movant’s asserted interests are among those the agency is required to consider in the proceeding; and

(c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention.

(2) Upon filing a motion to intervene, the would-be intervenor becomes a person who, pending ruling on the motion,
should receive all notices provided thereafter to parties and all 
papers the parties may thereafter file and serve.

(3) The fact that a person moving to intervene in a 
proceeding claims (1) that he is a citizen, a voter or a taxpayer 
or (2) that he has an interest that the law be enforced is, 
without more, insufficient grounds upon which the presiding 
officer may grant a motion to intervene.

(4) The presiding officer may grant a motion to intervene at 
any time, upon determining that the intervention sought is in the 
interests of justice and fairness and will not impair the orderly 
and prompt conduct of the proceedings.

(5) An association of persons, some of whose members are 
eligible for intervention, may be allowed to intervene upon the 
same showing and subject to the same conditions as its members who 
may be eligible to intervene.

(6) If a movant qualifies for intervention, the presiding 
officer may impose conditions upon the intervener's participation 
in the proceedings, subject to any applicable provision of law, 
including agency rules, either at the time that intervention is 
granted or at any subsequent time. Conditions may include:

(a) Limiting the intervener's participation to 
designated issues in which the intervener has a particular 
interest;

(b) Limiting the intervener's use of discovery, 
subpoenas, cross-examination, and other procedures so as to 
promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two (2) or more interveners to combine 
their presentations of evidence and argument, cross-examination, 
discovery, and other participation in the proceedings.

(7) The presiding officer shall issue an order granting or 
denying each pending motion to intervene, specifying any 
conditions, and briefly stating the reasons for the order. The 
presiding officer may modify the order at any time, briefly
stating the reasons for the order.

(8) A person who is subject to the jurisdiction of the agency shall be joined as a party in the proceeding if:

(a) In the person’s absence complete relief cannot be accorded among those already parties, or

(b) The person claims an interest relating to the subject of the proceeding and is so situated that the disposition of the proceeding in the person’s absence may (i) as a practical matter impair or impede the person’s ability to protect that interest or (ii) leave any of the parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person’s claimed interest. If the person has not been so joined, the presiding officer may order that the person be made a party and summoned to appear.

(9) After entry of an order allowing intervention or for joinder, the intervener or the person being joined shall be a party, subject to any conditions provided under the authority of subsection (6) of this section.

SECTION 41. The following shall be codified as Section 25-43-4.210, Mississippi Code of 1972:


(1) Prehearing discovery is authorized in formal adjudicative proceedings under this part. The presiding officer, at the request of any party or upon the presiding officer’s own motion, and subject to any applicable provision of law, including agency rules, may but is not required to allow discovery and issue protective orders, compel discovery, or grant sanctions in accordance with the Mississippi Rules of Civil Procedure as if the proceeding were a civil action governed by the Mississippi Rules of Civil Procedure.

(2) Each agency is authorized to issue subpoenas. The subpoena power of each agency extends throughout the entire State of Mississippi. The presiding officer, at the request of any
party shall, or upon the presiding officer’s own motion may, direct the agency to issue subpoenas. Every subpoena shall be issued by the agency, shall state the name and address of the agency, the official agency file or other reference number, and the style of the proceeding, and shall command each person to whom it is directed to attend and give testimony, or to produce and permit inspection, testing and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to which that person has reasonable access, or to permit inspection or testing of premises, at a time that may be before or at a hearing and at a place therein specified. Pursuant to agency rule, the subpoena may be issued by the person designated by agency rule to issue subpoenas on behalf of the agency or by the presiding officer, but otherwise in blank, to a party requesting it, who shall fill it in before service. A command to produce evidence or to permit inspection may be joined with a command to appear at hearing or at deposition, or may be issued separately.

(3) Subpoenas and other orders issued under this section may be enforced pursuant to the provisions of this chapter on civil enforcement of agency action. A subpoena shall be treated as an order for purposes of civil enforcement subpoenas.

(4) Witnesses subpoenaed to appear in agency proceedings shall receive at least the same fees and mileage as witnesses in civil actions in courts of record.

(5) A subpoena may be served by a sheriff, or by sheriff’s deputy, or by a representative of the agency, or by any other person who is not less than eighteen (18) years of age, and his or her return endorsed thereon shall be prima facie proof of service, or the person served may acknowledge service in writing on the subpoena. Service of the subpoena shall be executed upon the witness personally. Proof of service shall be made by filing with the agency from which the subpoena was issued a statement,
certified by the person who made the service, setting forth the
date and manner of service, the address, including the city and
county in which it was served, and the names of the person or
persons served.

(6) The agency may adopt rules that implement and elaborate
this section.

SECTION 42. The following shall be codified as Section
25-43-4.211, Mississippi Code of 1972:

25-43-4.211. Agency Records; Staff Recommendations;
Proceedings.

(1) An agency that relies on a witness in an adjudicative
proceeding, whether or not an agency employee, who has made prior
statements or reports with respect to the subject matter of the
witness' testimony, shall, on request, promptly make such
statements or reports available to parties, unless those
statements or reports are otherwise expressly protected from
disclosure by another provision of law. Identifiable agency
records that are relevant to disputed material facts involved in
an adjudicative proceeding, shall, upon request, promptly be made
available to a party unless the requested records are expressly
protected from disclosure by another provision of law. The
provisions of this subsection are independent of and in addition
to any provisions of the Mississippi Public Records Act.

(2) Not less than ten (10) days before a hearing under this
part, the agency staff shall serve upon all parties any
recommendation the staff will make at the hearing, including the
substance of the facts and circumstances supporting the
recommendation, and identification of all persons who have
provided facts or opinions upon which the staff recommendation is
based, and a summary of the grounds for each such opinion. The
agency staff shall serve upon all parties all other materials it
provides to the presiding officer.

(3) In the discretion of and within such time frames as he
may deem appropriate, the presiding officer may allow discovery
with respect to the staff recommendation and other materials the
staff provides to the presiding officer.

(4) The agency may adopt rules that implement and elaborate
this section.

SECTION 43. The following shall be codified as Section
25-43-4.212, Mississippi Code of 1972:


At a hearing:

(a) The presiding officer shall regulate the course of
the proceedings in conformity with any prehearing order and
subject to any applicable provision of law, including agency rule.
The presiding officer may expedite the proceedings, grant
continuances, recess or bifurcate hearings, and shall exercise
reasonable control over the mode and order of questioning
witnesses and presenting evidence so as to (i) make the
questioning and presentation effective for the ascertainment of
the facts, (ii) avoid needless consumption of time, (iii) protect
privacy rights, trade secrets, and other similar interests created
by another provision of law, and (iv) protect witnesses from
harassment or undue embarrassment.

(b) To the extent necessary for full disclosure of all
relevant facts and issues, the presiding officer shall afford to
all parties the opportunity to respond, present evidence and
argument, conduct cross-examination, and submit rebuttal evidence,
except as restricted by a limited grant of intervention, by agency
rule, or by a prehearing order.

(c) The presiding officer may give nonparties an
opportunity to present oral or written statements. If the
presiding officer proposes to consider a statement by a nonparty,
the presiding officer shall give all parties an opportunity to
challenge or rebut it and, on motion of any party, the presiding
officer shall require the statement to be given under oath or
affirmation.

(d) The presiding officer may conduct all or part of
the hearing by telephone, television, or other electronic means,
if each participant in the hearing has an opportunity to
participate in, to hear, and, if technically and practicably
feasible, to see the entire proceeding while it is taking place.

(e) The presiding officer shall cause all proceedings
at the hearing to be recorded and preserved, stenographically,
mechanically or electronically, by any means technically and
practicably feasible, and at the agency's expense. The agency is
not required, at its expense, to prepare a transcript, unless
required to do so by a provision of law. Upon written request,
the agency shall make available to any party to the proceeding,
for a reasonable cost of reproduction, a copy of any electronic
recording of the proceeding. Any party, at the party's expense,
may cause a qualified reporter to prepare a transcript from the
agency's record or to appear at the hearing to record the
proceedings stenographically, or cause additional electronic
recordings to be made during the hearing if the making of the
additional recordings does not cause undue distraction or
disruption.

(f) The hearing is open to public observation, except
for the parts that the presiding officer rules should be closed
pursuant to a provision of law authorizing closure, imposing
confidentiality requirements or protecting privacy rights. To the
extent that a hearing is conducted by telephone, television, or
other electronic means, and is not closed, the availability of
public observation is satisfied by giving members of the public an
opportunity, at reasonable times, to hear or inspect the agency's
record, and to inspect any transcript obtained by the agency.
Members of the public, including the news media, may record,
photograph, broadcast, videotape or telecast all or any part of
the hearing that is otherwise open to the public. The presiding
officer has full authority to provide such restrictions as will
avoid disruption or interference with the orderly conduct of the
hearing or with any other person’s participation in or observance
of the hearing.

SECTION 44. The following shall be codified as Section
25-43-4.213, Mississippi Code of 1972:


(1) Within his discretion the presiding officer may receive
and consider such evidence as reasonably prudent persons are
accustomed to relying on in the conduct of their serious affairs
even if such evidence would not be admissible in the trial of a
civil action. To this end, the presiding officer may consider the
Mississippi Rules of Evidence for guidance but should relax the
formal provisions and requisites of those rules, except rules
providing evidentiary privileges. The presiding officer shall
respect and enforce any provision of law providing privileges,
including the deliberative process privilege, imposing
confidentiality requirements or protecting privacy rights, trade
secrets, and other similar interests, and may enter protective
orders to those ends, except that the person for whose benefit any
such provision of law has been made may waive that protection.
Any party waives any privacy right and any other privilege, with
the exception of the lawyer-client privilege as defined in the
Mississippi Rules of Evidence and the deliberative process
 privilege, with respect to evidence relevant to any issue, claim
or defense the party asserts or puts in issue in the proceeding.
The presiding officer may enter an appropriate protective order to
prevent use or disclosure of such evidence outside the context of
the adjudicative proceeding or judicial review thereof.

(2) Upon proper objection, and in the absence of waiver, the
presiding officer shall exclude evidence that is irrelevant,
immaterial, unduly repetitious, or excludable on constitutional or
statutory grounds or on the basis of any evidentiary privilege
recognized in the courts of this state, or any other provision of
law imposing confidentiality requirements or protecting privacy
rights. In the absence of proper objection, the presiding officer
acting sus sporre may exclude evidence that is redundant,
repetitious or otherwise objectionable. Evidence may not be
excluded solely because it is hearsay. If evidence is excluded by
the hearing officer, the party offering the evidence may make an
offer of proof for the record.

(3) All testimony of parties and witnesses must be made
under oath or affirmation.

(4) Statements presented by nonparties in accordance with
Section 25-43-4.212(c) may be received as evidence.

(5) Subject to any applicable provision of law, including
agency rule, any part of the testimony or other evidence may be
received in written form, including prefiled direct testimony of
witnesses who will appear at the hearing, if doing so will
expedite the hearing without substantial prejudice to the
interests of any party, subject to any applicable agency rule.

(6) Documentary evidence may be received in the form of a
copy or excerpt. Upon request, parties must be given an
opportunity to compare the copy with the original if available.

(7) Official notice may be taken of (a) any fact that could
be judicially noticed in the courts of this state, (b) the record
of other proceedings before the agency, (c) technical or
scientific matters within the agency’s specialized knowledge, and
(d) codes or standards that have been adopted by an agency of the
United States, of this state or of another state, or by a
nationally recognized organization or association. Parties must
be notified before or during the hearing, or before the issuance
of any initial or final order that is based in whole or in part on
facts or material noticed, of the specific facts or material
noticed and the source thereof, including any staff memoranda and
data, and be afforded an opportunity to contest and rebut the
facts or material so noticed.

(8) The presiding officer should consider the agency’s expertise, technical competence, and specialized knowledge in the evaluation of the evidence.

SECTION 45. The following shall be codified as Section 25-43-4.214, Mississippi Code of 1972:


(1) Except as provided in subsection (2) or (3) of this section or unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer serving in an adjudicative proceeding, and any person or persons with authority to determine the outcome of such proceeding, or the agency head that may eventually review the matter on behalf of the agency, may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending at either the adjudicative level or agency review level, with any party, with any representative of a party, with any person who has a direct or indirect interest in the outcome of the proceeding, or with any person who presided at a previous stage of the proceeding, without notice and opportunity for all parties to participate in the communication.

(2) A presiding officer or any other person within subsection (1) may communicate with a party or representative regarding scheduling of hearings or other routine ministerial details not bearing on the issues in the proceeding.

(3) A member of a multi-member panel of presiding officers may communicate with other members of the panel regarding a matter pending before the panel, and any presiding officer may receive aid from staff assistants if the assistants do not (a) receive ex parte communications of a type that the presiding officer would be prohibited from receiving or (b) furnish, augment, diminish, or modify the evidence in the record.

(4) Unless required for the disposition of ex parte matters
specifically authorized by statute, no party to an adjudicative proceeding, no representative of a party, and no person who has a direct or indirect interest in the outcome of the proceeding or who presided at a previous stage of the proceeding, may communicate, directly or indirectly, in connection with any issue in that proceeding, while the proceeding is pending at either the initial adjudicative level or agency review level, with any person serving as presiding officer, or with any person or persons with authority to determine the outcome of such proceeding, or with any agency head who may eventually review the matter on behalf of the agency, without notice and opportunity for all parties to participate in the communication.

(5) If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (6) of this section.

(6) A presiding officer or other person who receives an ex parte communication prohibited by this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the presiding officer or other person received an ex parte communication, and shall serve notice on all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal within ten (10) days after service of notice of the communication and its substance.

(7) If necessary to eliminate the effect of an ex parte communication received in violation of this section, a presiding officer or other person who receives the communication may be
disqualified and the portions of the record pertaining to the
communication may be sealed by protective order.

(8) Any party may report any willful violation of this
section to appropriate authorities for any disciplinary
proceedings provided by law. In addition, each agency by rule may
provide for appropriate sanctions, including default, for any
violations of this section.

SECTION 46. The following shall be codified as Section
25-43-4.215, Mississippi Code of 1972:


(1) A person who has served as investigator, prosecutor or
advocate in an adjudicative proceeding or in its preadjudicative
stage may not serve as presiding officer or assist or advise a
presiding officer in the same proceeding.

(2) A person who is subject to the authority or direction,
of one who has served as investigator, prosecutor, or advocate in
an adjudicative proceeding or in its preadjudicative stage may not
serve as presiding officer or assist or advise a presiding officer
in the same proceeding.

(3) A person who has participated in a determination of
probable cause or other equivalent preliminary determination in an
adjudicative proceeding may serve as presiding officer or assist
or advise a presiding officer in the same proceeding, unless a
party demonstrates grounds for disqualification in accordance with

(4) A person may serve as presiding officer at successive
stages of the same adjudicative proceeding, unless a party
demonstrates grounds for disqualification in accordance with

SECTION 47. The following shall be codified as Section
25-43-4.216, Mississippi Code of 1972:

25-43-4.216. Final Order; Initial Order.

(1) If the presiding officer is the agency head, the
presiding officer shall issue a final order.

(2) If the presiding officer is not the agency head, the presiding officer shall issue an initial order, which becomes a final order unless reviewed in accordance with Section 25-43-4.217.

(3) A final order or initial order must include, separately stated:

(a) Findings of fact;
(b) Conclusions of law;
(c) Reasoned application of law to facts; and
(d) Policy reasons for the decision if it is an exercise of the agency's discretion, for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a motion for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, must be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The order must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. An initial order must include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(4) Findings of fact must be based on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. Findings may be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their serious affairs and may be based on such evidence even if it would be inadmissible in a civil trial. The presiding officer may utilize his experience, technical competence, and specialized knowledge in evaluating evidence. The presiding officer should consider the legislative facts and policy judgments underlying and justifying the rule of law that is applicable to the issues at the hearing.
(5) If a person serving or designated to serve as presiding officer becomes unavailable, for any reason, before issuance of the final order or initial order, a substitute presiding officer must be appointed as provided in Section 25-43-4.202. The substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(6) The presiding officer may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings and conclusions.

(7) A final order or initial order pursuant to this section must be issued in writing within ninety (90) days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (6) of this section unless this period is waived or extended with the written consent of all parties or for good cause shown.

(8) The presiding officer shall serve copies of the final order or initial order on each party and on the agency head. The presiding officer may direct the agency to serve the final order or initial order.

SECTION 48. The following shall be codified as Section 25-43-4.217, Mississippi Code of 1972:


(1) The agency head, upon its own motion may, and upon motion by any party for review by the agency head shall, review an initial order, except to the extent that:

(a) A provision of law precludes or limits agency review of the initial order; or

(b) The agency head, in the exercise of discretion conferred by a provision of law:

(i) Determines to review some but not all issues, or

(ii) Does not exercise any review;
(ii) Delegates its authority to review the initial order to one or more persons; or

(iii) Authorizes one or more persons to review the initial order, subject to further review by the agency head.

(2) A motion for review from an initial order must be filed with the agency head, or with any person designated for this purpose by rule of the agency, and served on all parties within twenty (20) days after issuance of the initial order. If the agency head on its own motion decides to review an initial order, the agency head shall serve on all parties notice of its intention to review the initial order within twenty (20) days after its issuance.

(3) The twenty (20) day period for a party to file a motion for review by the agency head or for the agency head to serve notice of its intention to review an initial order on the agency head's own motion is tolled by the filing of a timely motion for reconsideration of the initial order pursuant to Section 25-43-4.219, and a new twenty-day period starts to run upon disposition of the motion for reconsideration. If an initial order is subject both to a timely motion for reconsideration and to a motion for review or to review by the agency head on its own motion, the motion for reconsideration must be disposed of first, unless the agency head determines that action on the motion for reconsideration has been unreasonably delayed.

(4) A party filing a motion for agency review must state its basis within the motion. If the agency head on its own motion serves notice of its intent to review an initial order, the agency head shall identify the issues that it intends to review.

(5) The reviewing officer, the agency head or other appropriate presiding officer for the review of an initial order, shall exercise all the decision-making power that the presiding officer would have had to issue a final order had the presiding officer presided over the hearing, except to the extent that the
issues subject to review are limited by a provision of law or by
the agency head or other presiding officer upon notice to all
parties.

(6) The reviewing officer, the agency head or other
presiding officer reviewing the matter, shall afford each party an
opportunity to present written briefs and may afford each party an
opportunity to present oral argument. The reviewing officer in
his discretion may allow supplemental briefs and briefs in the
nature of amicus curiae briefs.

(7) Before issuing a final order, the agency head or other
reviewing officer may cause a transcript to be prepared, at the
agency's expense, of such portions of the proceeding under review
as the agency head or reviewing officer considers necessary.

(8) The agency head or other reviewing officer may issue a
final order disposing of the proceeding or may remand the matter
for further proceedings with instructions to the presiding officer
who issued the initial order. Upon remanding a matter, the agency
head or other presiding officer reviewing the matter may order
such temporary relief as may be authorized and appropriate.

(9) A final order or an order remanding the matter for
further proceedings must be issued in writing within sixty (60)
days after service of the last brief or oral argument, if any,
whichever is later, unless that period is waived or extended with
the written consent of all parties or for good cause shown.

(10) A final order or an order remanding the matter for
further proceedings under this section must identify any
difference between this order and the initial order and must
include, or incorporate by express reference to the initial order,
all the matters required by Section 25-43-216(c).

(11) Upon remand, the presiding officer shall issue in
writing an initial order resolving the matter on remand within
sixty (60) days after service of the order of remand, unless this
period is waived or extended with the written consent of all of
the parties or for good cause shown.

(12) The agency head or other presiding officer reviewing the matter shall serve copies of the final order or order remanding the matter for further proceedings on each party and, if issued by other presiding officer, on the agency head.

SECTION 49. The following shall be codified as Section 25-43-4.218, Mississippi Code of 1972:


(1) Except as otherwise provided by law, no action for enforcement of a final order may be taken until the expiration of ten (10) days after the later of (a) the issuance of the order or (b) the issuance of the final disposition of a motion made under Section 25-43-4.219.

(2) A party may move for a stay of effectiveness of an initial or final order within ten (10) days after its issuance unless otherwise provided by statute or stated in the initial or final order. The agency head or other presiding officer may take action on the motion for stay, either before or after the effective date of the initial or final order, and, if the stay is granted, provide appropriate terms that must be satisfied before the stay becomes effective.

SECTION 50. The following shall be codified as Section 25-43-4.219, Mississippi Code of 1972:

25-43-4.219. Alteration; Amendment; Reconsideration.

Unless otherwise provided by statute or rule:

(a) Any party, within twenty (20) days after issuance of an initial order or final order, may move for alteration, amendment, or reconsideration of the order, in whole or in part, stating the specific grounds upon which relief is requested. The filing of the motion is not a prerequisite for seeking administrative or judicial review.

(b) The motion must be disposed of by the same person or persons who issued the initial order or final order, if
The agency head or presiding officer that issued the initial order or final order shall issue a written order denying the motion; granting the motion and altering, amending, or otherwise modifying the initial order or final order; or granting the motion and setting the matter for further proceedings. The motion may be granted, in whole or in part, only if the agency head or other presiding officer states, in the written order, findings of fact, conclusions of law, reasoned application of law to fact, and policy reasons for the decision if it is an exercise of the agency's discretion, to justify the order. The motion is deemed to have been denied if the agency head or other presiding officer does not serve an order disposing of it within twenty (20) days after the filing of the motion.

SECTION 51. The following shall be codified as Section 25-43-4.220, Mississippi Code of 1972:


If, pursuant to statute, an agency may review the final order of another agency, the review is deemed to be a continuous proceeding as if before a single agency. The final order of the first agency is treated as an initial order, and the second agency functions as though it were reviewing an initial order in accordance with Section 25-43-4.217.

SECTION 52. The following shall be codified as Section 25-43-4.221, Mississippi Code of 1972:


(1) Unless a later date is stated in a final order or a stay is granted, a final order is effective twenty (20) days after issuance, but:

(a) A party may not be required to comply with a final order unless the party has been served with or otherwise has actual knowledge of the final order;

(b) A nonparty may not be required to comply with a
(2) Unless a later date is stated in an initial order or a stay is granted, the time when an initial order becomes a final order in accordance with Section 25-43-4.216 is determined as follows:

(a) When the initial order is issued, if administrative review is unavailable;

(b) When the agency head issues an order stating, after a motion for review has been filed, that review will not be exercised, if discretion is available to make a determination to this effect; or

(c) Twenty (20) days after issuance of the initial order, if:

(i) No party has filed a motion for administrative review;

(ii) No party has filed a motion to alter, amend or reconsider the order; and

(iii) The agency head has not given written notice of its intention to exercise review.

(3) Unless a later date is stated in an initial order or a stay is granted, an initial order that becomes a final order in accordance with subsection (2) of this section and Section 25-43-4.216 is effective after becoming a final order, but:

(a) A party may not be required to comply with the final order unless the party has been served with or has actual knowledge of the initial order or of an order stating that review will not be exercised; and

(b) A nonparty may not be required to comply with the final order unless the agency has made the initial order available for public inspection and copying or the nonparty has actual knowledge of the initial order or of an order stating that review
will not be exercised.

(4) This section does not preclude an agency from taking immediate action to protect the public interest in accordance with Section 25-43-4.601.

SECTION 53. The following shall be codified as Section 25-43-4.222, Mississippi Code of 1972:

  25-43-4.222. **Agency Record.**

  (1) An agency shall maintain an official record of each adjudicative proceeding under this part.

  (2) The agency record consists of all matters received by the agency pertaining to the proceeding, which may include but are not limited to:

  (a) Applications for adjudicative proceedings and amendments thereto;

  (b) Notices of all proceedings;

  (c) Any prehearing order;

  (d) Any pleadings, motions, requests, and intermediate rulings;

  (e) Evidence received or considered;

  (f) A statement of matters officially noticed;

  (g) Any public comment received by the agency;

  (h) Any comment received by the agency from another agency, including federal agencies;

  (i) Proffers of evidence and objections and rulings thereon;

  (j) Proposed findings and conclusions, requested orders, and exceptions;

  (k) The record prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;

  (l) Staff memoranda, data or recommendations submitted to the presiding officer, unless prepared and submitted by personal assistants and not inconsistent with Section...
2247 25-43-4.214(3);
2248  
2249  (m) Matters placed on the record after an ex parte
2250  communication;
2251  
2252  (n) Any and all other matters filed with the agency by
2253  any person with the apparent purpose of affecting the outcome of
2254  the proceeding; and
2255  
2256  (o) Any final order, initial order, or order of
2257  alteration, amendment or reconsideration.
2258  
2259  (3) Except to the extent that this chapter or another
2260  statute provides otherwise, the agency record constitutes the
2261  exclusive basis for agency action in adjudicative proceedings
2262  under this part and for judicial review thereof.
2263  
2264  (4) Upon appropriate and timely suggestion, the agency may
2265  require or permit subsequent corrections or additions to the
2266  agency record.
2267  
2268  (5) Upon request and as may be required by law, on judicial
2269  review, civil enforcement or otherwise, the agency shall prepare
2270  the agency record. The agency has the exclusive responsibility to
2271  prepare and exclusive authority to certify the record or any part
2272  thereof, including but not limited to any transcript of
2273  proceedings, and the agency’s certificate shall be accepted by the
2274  court and by any other agency.
2275  
2276  (6) Subject to the limitations of this chapter, an agency
2277  may by rule provide the formal process for its preparation and
2278  certification of the agency record.
2279  
2280  PART III
2281  
2282  DIVISION OF INDEPENDENT HEARING OFFICERS
2283  
2284  SECTION 54. The following shall be codified as Section
2285  25-43-4.301, Mississippi Code of 1972:
2286  
2287  25-43-4.301. Division of Independent Hearing Officers –
2288  Creation, Powers, Duties.
2289  
2290  (1) There is created the Division of Independent Hearing
2291  Officers within the Executive Department of the government of the
State of Mississippi, to be headed by a director appointed by the
Governor by and with the consent of the Senate. The director
shall be a lawyer who was licensed to practice law at least five
years prior to appointment and who is an active
member of The Mississippi Bar. The director shall receive an
annual salary set by the Legislature.

(2) The Division of Independent Hearing Officers shall
employ persons as necessary to service the needs of agencies for
hearing officers to conduct adjudicative proceedings as required
by this chapter or other provision of law. The division may
employ persons as full-time employees of the division or as
part-time employees of the division. The division may engage the
services of persons on any other contractual basis. The director
may serve as a hearing officer. The division will ordinarily
provide hearing officers to preside at adjudicative proceedings
only where requested by an agency and where an agency is an
interested party to the proceedings and not merely a neutral
arbiter with no significant stake in the outcome of the
proceedings beyond an interest that the proceedings be promptly,
efficiently, fairly, and justly administered.

(3) The Division of Independent Hearing Officers is
authorized to hire persons with the following qualifications:

(a) Attorneys licensed to practice law for a minimum of five
(5) years;

(b) Certified public accountants with a minimum of five
(5) years of professional experience;

(c) Such other qualified professionals in areas other
than law and accounting as needed by the agencies requiring the
services of hearing officers whose services have been engaged or
contracted for by the Division of Independent Hearing Officers.

(4) The persons whose services are engaged by the division
to preside at adjudicative proceedings shall be known as hearing
officers.
The division may furnish hearing officers to any agency on a contractual basis and charge the agency reasonable fees for the services rendered. Any agency receiving the services of hearing officers provided by the division is authorized to pay the fees charged by the division.

The division shall have authority:

(a) To further specify qualifications for hearing officers as the needs of agencies become known, to establish salaries for the hearing officers, procedures by which applicants will be considered for employment, and the manner in which public notice of vacancies in the staff of the division will be given;

(b) To enter into contracts with qualified persons who will serve as part-time hearing officers on such terms and conditions as may be appropriate and agreed upon subject to the provisions of this chapter;

(c) To establish procedures for agencies to request and for the director to assign hearing officers consistent with this chapter;

(d) To receive, consider and respond to agency needs for hearing officers with special education, training and experience in the area or field in which the agency is charged with regulatory and administrative responsibilities;

(e) To solicit and receive from agencies recommendations for individuals who may serve as hearing officers, part-time hearing officers or contract hearing officers;

(f) From time to time, to survey the agencies and a representative sampling of persons regulated by the respective agencies to discover the history, experience, current requirements and future needs of and for hearing officers in adjudicative proceedings and, with the cooperation of the agencies, to assess the professional quality, experience and performance of hearing officers;

(g) To establish internal procedures that apply only
within the division and adopt forms consistent with this chapter,
the model rules of procedure, and other provision of law, to
govern the hearing officers and to assure their independence in
the performance of their duties;

(h) To establish, implement and enforce policies and
standards for the fair, speedy and cost-effective determination of
each matter requiring an adjudicative proceeding under this
chapter or other provision of law;

(i) To establish standards and procedures for the
evaluation, training, promotion, and discipline of the hearing
officers;

(j) To convene conferences, continuing legal,
regulatory and administrative education programs and training
seminars in the fields of administrative law, public regulation,
and public administration;

(k) To participate in, and expend any funds available
to it, to enable its hearing officers and other employees to
participate in conferences in state and out of state for
continuing legal, regulatory and administrative education and
training, colleges, seminars and other programs;

(l) To maintain a library for use by the division, its
employees, contractors, agencies and the public;

(m) To accept monies, gifts, grants, equipment or
services from any public or private source and use those for any
purpose authorized by this section;

(n) To cooperate with any individual or public agency,
whether state or federal, or with any law school, school of
political science, government, public administration, business or
other similar school, public or private, to improve the quality of
administrative law, public regulation and public administration in
this state;

(o) To maintain records, compile statistics and
otherwise gather and keep information reasonably necessary to
maintain and enhance the quality of administrative law, public
regulation and public administration in this state;

(p) To employ such personnel as may be necessary to
carry out its duties and responsibilities;

(q) To engage such persons and acquire such equipment
as may be reasonably necessary to record and preserve in any
technically and practicably feasible manner all matters and
proceedings had at any adjudicative hearing and to assist the
agency in preparing the record under Section 25-43-4.222(5) and
generally to facilitate the preparation of the agency record of
any such proceeding for administrative review, judicial review,
civil enforcement or other purposes;

(r) To purchase, lease or otherwise acquire the use of
office space and equipment and maintain the same as may be
reasonably necessary;

(s) To prepare an annual budget for the operation of
the division, to make appropriate and timely requests for funding,
and to administer and otherwise oversee the implementation of such
funding requests and budget;

(t) To adopt rules to implement the powers and
authorities conferred upon the division by law;

(u) To otherwise implement the provisions of this
section and rules adopted under the authority of the division.

PART IV

INFORMAL ADJUDICATIVE HEARING

SECTION 55. The following shall be codified as Section
25-43-4.401, Mississippi Code of 1972:


(1) An agency may use an informal adjudicative hearing if
its use in the circumstances does not violate any provision of law
and the matter is entirely within one or more categories for which
the agency by rule has adopted this part; however, those
categories may include only the following:
(a) A matter in which there is no genuine issue of material fact; or
(b) A matter in which there is a genuine issue of material fact, if the matter involves only:
   (i) A claim for unemployment compensation benefits within Title 71, Chapter 5, Article 11, Mississippi Code of 1972;
   (ii) A disciplinary sanction against a prisoner;
   (iii) A disciplinary sanction against a student which may involve expulsion from an academic institution or suspension for more than ten (10) days;
   (iv) A disciplinary sanction against a public employee which does not involve discharge from employment or suspension for more than ten (10) days;
   (v) A disciplinary sanction against a licensee which does not involve revocation, suspension, annulment, withdrawal, or amendment of a license or does not involve a potential penalty of more than Five Thousand Dollars ($5,000);
   (vi) Revocation or suspension of a hunting, fishing, trapping or other similar license issued under Title 49, Chapter 7, Mississippi Code of 1972; or
   (vii) Any other matter that involves an amount in controversy of not more than Five Thousand Dollars ($5,000);
(c) A matter in which all of the parties give their informed consent and agreement that an informal adjudicative hearing may be used.

(2) The agency may by rule adopt and implement this part.

SECTION 56. The following shall be codified as Section 25-43-4.402, Mississippi Code of 1972:


The procedures of this chapter pertaining to formal adjudicative hearings apply to an informal adjudicative hearing, except to the following extent:

(a) If a matter is initiated as an informal
adjudicative hearing, no prehearing conference may be held.

(b) The provisions of Section 25-43-4.210 do not apply
to informal adjudicative hearings insofar as those provisions
authorize the issuance and enforcement of subpoenas and discovery
orders, but do apply to informal adjudicative hearings insofar as
those provisions authorize the presiding officer to issue
protective orders at the request of any party or upon the
presiding officer's motion.

(c) Sections 25-43-4.212(a), (b) and (c) and
25-43-4.213 do not apply; but:

(i) The presiding officer shall regulate the
course of the proceedings;

(ii) Only the parties may testify and present
exhibits or other evidence except that the presiding officer for
good cause shown may allow others to testify and present exhibits
or other evidence; and

(iii) The parties may comment on the issues.

SECTION 57. The following shall be codified as Section
25-43-4.403, Mississippi Code of 1972:


(1) If the presiding officer has reason to believe that
there are genuine issues of material fact, the presiding officer
may require any party to state the identity of the witnesses or
other sources through whom the party would propose to present
proof if the proceeding were converted to a formal adjudicative
hearing, but the presiding officer shall respect and enforce any
provision of law providing privileges, including the deliberative
process privilege, imposing confidentiality requirements or
protecting privacy rights, trade secrets, and other similar
interests, and may enter protective orders to those ends, except
that the person for whose benefit any such provision of law has
been made may waive that protection. Any party waives any privacy
right or any other privilege, with the exception of the
lawyer-client privilege as defined in the Mississippi Rules of Evidence, and the deliberative process privilege, with respect to evidence relevant to any issue, claim or defense the party asserts or puts in issue in the proceeding. The presiding officer may enter an appropriate protective order to prevent use or disclosure of such evidence outside the context of the adjudicative proceeding or judicial review thereof.

(2) If a party has reason to believe that essential facts must be obtained in order to permit an adequate presentation of the case, the party may inform the presiding officer regarding the general nature of the facts and the sources from whom the party would propose to obtain those facts if the proceeding were converted to a formal adjudicative hearing.

PART V

BASIC ADJUDICATIVE PROCEEDINGS

SECTION 58. The following shall be codified as Section 25-43-4.501, Mississippi Code of 1972:


(1) An agency may use a basic adjudicative proceeding if its use in the circumstances does not violate any provision of law and the matter is entirely within one or more categories for which the agency by rule has adopted Sections 25-43-4.502 through 25-43-4.505; however, these categories may include only the following:

(a) A matter in which the protection of the public interest does not require the agency to serve notice and give an opportunity to participate to persons other than the parties;

(b) A disciplinary sanction against a student which is not expulsion from an academic institution and is potentially a suspension for ten (10) days or less;

(c) A matter in which the amount in controversy is not more than One Hundred Dollars ($100.00);
(d) The denial of an application after the applicant has abandoned the application;

(e) The denial of an application for admission to an educational institution or for employment by an agency;

(f) The denial, in whole or in part, of an application if the applicant has an opportunity for administrative review in accordance with Section 25-43-4.503;

(g) A matter that may be resolved solely on the basis of inspection, examinations, or tests;

(h) Any matter having only trivial potential impact upon the affected parties; or

(i) A matter in which all of the parties have given their informed consent and agreement that a basic adjudicative hearing may be used.

(2) An agency may by rule adopt and implement this part.

SECTION 59. The following shall be codified as Section 25-43-4.502, Mississippi Code of 1972:


(1) The agency head, one or more members of the agency head, one or more hearing officers or administrative judges employed or appointed by the agency, or one or more hearing officers assigned by the Division of Independent Hearing Officers in accordance with Section 25-43-4.301, or any combination thereof, in the discretion of the agency head, may be the presiding officer. Unless prohibited by law, a person exercising authority over the matter is the presiding officer.

(2) If the proceeding involves a monetary matter or a reprimand, warning, disciplinary report, or other sanction:

(a) The presiding officer, before taking action, shall give each party an opportunity to be informed of the agency's view of the matter and to explain the party's view of the matter; and

(b) The presiding officer, at the time any unfavorable action is taken, shall give each party a brief statement of
findings of fact, conclusions of law, and policy reasons for the
decision if it is an exercise of the agency's discretion, to
justify the action, and a notice of any available administrative
review.

(3) The agency, by reasonable means, shall serve a copy of
the order in a basic adjudicative proceeding on each party. The
order must include at least a statement of the agency's action and
a notice of any available administrative review.

(4) If after reasonable advance notice of a basic
adjudicative hearing, a party fails to attend or participate in
the hearing, the presiding officer may declare the party in
default and enter a default order. The agency must promptly serve
the default order on the party found in default. For good cause,
the presiding officer may modify or rescind the default order.

(5) An agency may by rule provide for additional procedures
for basic adjudicative proceedings, not inconsistent with this
chapter or other provision of law.

SECTION 60. The following shall be codified as Section
25-43-4.503, Mississippi Code of 1972:

25-43-4.503. Administrative Review of Basic Adjudicative
Proceedings – Applicability.

Unless prohibited by any provision of law, an agency, on its
own motion, may conduct administrative review of an order
resulting from basic adjudicative proceedings, and shall conduct
this review upon the written request of a party if the agency
receives the request within twenty (20) days after serving notice
under Section 25-5-4.502(3).

SECTION 61. The following shall be codified as Section
25-43-4.504, Mississippi Code of 1972:

25-43-4.504. Administrative Review of Basic Adjudicative
Proceedings – Procedures.

Unless otherwise provided by statute or rule:

(a) An agency need not serve notification of the
pendency of administrative review to any person who did not request the review, but the agency may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(b) The reviewing officer, in the discretion of the agency head, may be any person who could have presided at the basic adjudicative proceeding, but the reviewing officer must be one who is authorized to grant appropriate relief upon review.

(c) The reviewing officer shall give each party an opportunity to explain the party's view of the matter unless the party's view is apparent from the written materials in the file submitted to the reviewing officer. The reviewing officer shall make any inquiries necessary to ascertain whether the proceeding must be converted to an informal adjudicative hearing or a formal adjudicative hearing.

(d) The reviewing officer may issue an order disposing of the proceeding in any manner that was available to the presiding officer at the basic adjudicative proceeding, or the reviewing officer may remand the matter for further proceedings, with or without conversion to an informal adjudicative hearing or a formal adjudicative hearing.

(e) The order on review must be in writing, including a brief statement of reasons for the decision, and a notice of any further available administrative review.

(f) A request for administrative review is deemed to have been denied if the reviewing officer does not dispose of the matter or remand it for further proceedings within twenty (20) days after the request is submitted.

SECTION 62. The following shall be codified as Section 25-43-4.505, Mississippi Code of 1972:

(1) The agency record consists of any documents regarding the matter that were considered or prepared by the presiding officer for the basic adjudicative proceeding or by the reviewing officer for any review. The agency shall maintain these documents as its official record.

(2) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in basic adjudicative proceedings or for judicial review thereof.

PART VI
EMERGENCY ADJUDICATIVE PROCEEDINGS

SECTION 63. The following shall be codified as Section 25-43-4.601, Mississippi Code of 1972:


(1) An agency may use emergency adjudicative proceedings in a situation involving a clear and present danger to the public health, safety or welfare requiring immediate agency action. Subject to this chapter and other applicable law, an agency may provide by rule for the use of emergency adjudicative proceedings, including rules providing for the delegation of initial decision-making authority.

(2) Except as provided in subsection (3) of this section, an agency may take only such action as is necessary to prevent or avoid a clear and present danger to the public health, safety or welfare that justifies use of emergency adjudication.

(3) An agency may comply with more stringent immediate requirements of federal law or regulation or with any interstate compact.

(4) An agency may respect any party’s due process right to reasonable advance notice and the opportunity to be heard.

(5) The agency shall issue an order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the agency's
discretion, to justify the finding of a clear and present danger and the agency's decision to take the specific action.

(6) The agency shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when served.

(7) After service of an order pursuant to this section, any person subject to the order may, upon the filing of a written request, require the agency to provide within three (3) days of filing the request an emergency hearing before a person or persons assigned by the Division of Independent Hearing Officers who shall hear the person subject to the order present any matter in objection to the order and who shall hear the agency on any matter in support and justification of the order. The hearing may be continued at the request of the person subject to the order. After hearing these matters, the hearing officer shall have authority to modify the order subject to the criteria of subsections (2) and (3) of this section.

(8) After issuing an order pursuant to this section, the agency shall treat the matter as a preference case and expedite the proceedings, as feasible, to complete any proceedings that would be required if the matter did not involve a clear and present danger.

(9) The agency record consists of any documents regarding the matter that were considered or prepared by the agency. The agency shall maintain these documents as its official record.

(10) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency adjudicative proceedings or for judicial review thereof.

ARTICLE V

JUDICIAL REVIEW AND CIVIL ENFORCEMENT

PART I

JUDICIAL REVIEW
SECTION 64. The following shall be codified as Section 25-43-5.101, Mississippi Code of 1972:

25-43-5.101. Relationship Between this chapter and Other Law on Judicial Review and Other Judicial Remedies.

(1) Except as provided in subsection (3), (4), (5) or (6) of this section, this chapter establishes the exclusive means of judicial review of agency action.

(2) Proceedings for judicial review shall be governed by the Mississippi Rules of Appellate Procedure. Any matter of practice or procedure respecting judicial review of agency action which is not addressed by the Mississippi Rules of Appellate Procedure shall be governed by this chapter.

(3) If the relief available under this chapter is not equal or substantially equivalent to the relief otherwise available under law, the relief otherwise available and the related procedures supersede and supplement this chapter to the extent reasonably necessary for their effectuation. The applicable provisions of this chapter and other law must be combined and harmonized to the extent reasonably practicable to govern a single proceeding or, if the court orders, two (2) or more separate proceedings, but no type of relief may be sought in a combined proceeding after expiration of the time limit for doing so.

(4) Proceedings for declaratory judgments and injunctive relief respecting agency action, where expressly allowed by a statute other than as contained in this chapter, shall be governed by the Mississippi Rules of Civil Procedure and other applicable law.

(5) Proceedings for extraordinary writs such as writs of mandamus and prohibition with regard to agency action may be brought only before the Supreme Court or the Court of Appeals. Such proceedings shall be governed by Mississippi Code, Title 11, Chapter 41, the Mississippi Rules of Appellate Procedure and other provisions of law. In a proceeding for judicial review a party,
in addition or in the alternative, may seek an extraordinary writ.

(6) Upon the motion of a party, or upon the court’s own motion, acting sua sponte, a proceeding for judicial review of agency action may be converted to an application for an extraordinary writ, and, conversely, an application for an extraordinary writ may be converted to a proceeding for judicial review. In the event of conversion, the converted action shall relate back to the time of the original action.

(7) Declaratory opinions issued pursuant to Section 25-43-2.103 are not subject to judicial review.

(8) "Party to judicial review or civil enforcement proceedings," or "party" in contexts so indicating, means:

(a) A person who files a notice of judicial review or a complaint for civil enforcement;

(b) A person named as a party in a proceeding for judicial review or civil enforcement or allowed to participate as a party in the proceeding; and

(c) The agency in a proceeding for judicial review or civil enforcement.

SECTION 65. The following shall be codified as Section 25-43-5.102, Mississippi Code of 1972:


A person who qualifies under this chapter regarding (a) standing (Section 25-43-5.106), (b) exhaustion of administrative remedies (Section 25-43-5.107), and (c) time for filing the notice of judicial review (Section 25-43-5.108), and other applicable provisions of law regarding bond, compliance, and other preconditions, is entitled to judicial review of final agency action, whether or not the person has sought judicial review of any related nonfinal agency action.

SECTION 66. The following shall be codified as Section 25-43-5.103, Mississippi Code of 1972:

Except as provided in Sections 25-43-5.101(3), (4), (5) and (6), a person is entitled to judicial review of nonfinal agency action only if:

(a) It appears likely that the person will qualify under Section 25-43-5.102 for judicial review of the related final agency action;

(b) The person has applied to the agency for an order for judicial review of nonfinal agency action and the agency has granted or denied the application, provided that the agency ordinarily should give its reasons for granting or denying the application; and

(c) The criteria of the Mississippi Rules of Appellate Procedure respecting interlocutory appeals or of the Mississippi Rules of Civil Procedure respecting a judgment upon multiple claims or involving multiple parties are satisfied.

SECTION 67. The following shall be codified as Section 25-43-5.104, Mississippi Code of 1972:


(1) The Mississippi Court of Appeals has authority to conduct judicial review except as provided:

(a) In Title 77, in the case of judicial review of agency action of the Mississippi Public Service Commission;

(b) In Sections 71-5-529, 71-5-531, 71-5-533 in the case of judicial review of agency action of the Mississippi Employment Security Commission; and

(c) In Sections 25-43-5.101(3), (4), (5) and (6).

(2) If evidence is to be adduced in the court in accordance with Section 25-43-5.114(1), the court may remand the matter:

(a) To the agency with appropriate directions; or

(b) If the court determines in its sound discretion that the nature of one or more issues upon which new evidence may be taken is such that remand to the agency would be inappropriate, to a master as provided by the Mississippi Rules of Civil
Procedure, provided that, in addition to the provisions of the Mississippi Rules of Civil Procedure:

(i) Any person eligible for appointment as a special judge under Section 9-1-105(6) is eligible for appointment as a master; or

(ii) The Division of Independent Hearing Officers may supply a person who becomes eligible for appointment as a master.

(3) Except as provided otherwise by this chapter or other statute, an agency retains jurisdiction as may be appropriate, convenient and otherwise necessary pending judicial review.

SECTION 68. The following shall be codified as Section 25-43-5.105, Mississippi Code of 1972:


(1) Except as provided in Title 77, and in Sections 71-5-529, 71-5-531, and 71-5-533, judicial review is initiated by filing a notice of judicial review in the Court of Appeals. Failure of a party initiating a proceeding for judicial review to take any step other than the timely filing of a notice of judicial review does not affect the perfection of the proceeding for judicial review, but is grounds only for such action as the court deems appropriate, which may include dismissal of the proceeding for judicial review.

(2) A party initiating a proceeding for judicial review may seek any type of relief available under Section 25-43-5.101(3), (4), (5) or (6) or 25-43-5.117 or other law.

SECTION 69. The following shall be codified as Section 25-43-5.106, Mississippi Code of 1972:


(1) The following persons have standing to obtain judicial review of final or nonfinal agency action:

(a) A person to whom the agency action is specifically directed;
(b) A person who was a party to the agency proceedings that led to the agency action;

c) If the agency action, review of which is sought, is a rule, a person subject to that rule or an association some of whose members are subject to that rule;

d) A person eligible for standing under another provision of law; or

e) A person otherwise aggrieved or adversely affected by the agency action or an association one or more of whose members are aggrieved or adversely affected by the agency action.

For purposes of this paragraph, no person has standing as one otherwise aggrieved or adversely affected unless:

(i) The agency action has arguably affected or is arguably likely to affect that person;

(ii) That person's asserted interests are arguably among those that the agency was required to consider when it engaged in the agency action review of which is sought; and

(iii) A judgment in favor of that person may substantially eliminate or redress the arguable effect to or upon that person caused or arguably likely to be caused by the agency action.

(2) A claim that the decision in a proceeding for judicial review may be given precedential effect that may affect a person is, without more, insufficient grounds upon which the court may find that the person has standing. Even though he may lack standing, the person may apply for leave to file a brief as amicus curiae under the Mississippi Rules of Appellate Procedure.

(3) A claim (1) that he is a citizen, a voter or a taxpayer or (2) that he has an interest that the law be enforced is, without more, insufficient grounds upon which the court may find that a person has standing.

SECTION 70. The following shall be codified as Section 25-43-5.107, Mississippi Code of 1972:
A person may file a notice of judicial review under this chapter only after exhausting all administrative remedies available within the agency review of whose action is being sought and within any other agency authorized to exercise administrative review, but:
(a) A person seeking judicial review of a rule need not have participated in the rule-making proceeding upon which that rule is based, or have moved for its amendment or repeal;
(b) A person seeking judicial review need not exhaust administrative remedies to the extent that this chapter or any other law provides that exhaustion is not required; or
(c) The court may relieve a person seeking judicial review of the requirement to exhaust any or all administrative remedies, to the extent that the administrative remedies are inadequate, or requiring their exhaustion would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

SECTION 71. The following shall be codified as Section 25-43-5.108, Mississippi Code of 1972:

Subject to other requirements of this chapter or of any other law:
(a) A notice of judicial review of a rule may be filed at any time, except as limited by Section 25-43-3.113(2).
(b) A notice of judicial review of an order is not timely unless filed within thirty (30) days after issuance of the written order by a person authorized to act for the agency.
(c) The time for filing notice of judicial review is extended during the pendency of the person’s timely attempts to exhaust administrative remedies.

SECTION 72. The following shall be codified as Section 25-43-5.109, Mississippi Code of 1972:

(1) Except as provided in Title 77, and in Sections 71-5-529, 71-5-31, and 71-5-533, a notice of judicial review must be filed with the clerk of the Court of Appeals, who is the clerk of the Supreme Court.

(2) A notice of judicial review should set forth:

(a) The name and mailing address of each person seeking judicial review;

(b) The name and mailing address of the agency whose action is at issue;

(c) Identification of the agency action at issue, together with a duplicate copy, summary or brief description of the agency action; and

(d) Identification of persons who were parties to, or persons who participated in, any adjudicative proceedings that led to the agency action.

(3) A notice of judicial review in substantial compliance with the requirements of subsection (2) of this section may not be dismissed for failure of complete compliance. Judicial review shall not be denied for informality of form or title of the notice of judicial review.

SECTION 73. The following shall be codified as Section 25-43-5.110, Mississippi Code of 1972:


A person filing a notice of judicial review shall, contemporaneously therewith, serve a copy of the notice in the manner provided for service of papers by Section 25-43-4.108 respecting service:

(a) Upon the agency review of whose action is sought; and

(b) Upon all other parties to, or persons who
participated in, any adjudicative proceedings that led to the action.

SECTION 74. The following shall be codified as Section 25-43-5.111, Mississippi Code of 1972:

25-43-5.111. Stay and Other Temporary Remedies Pending Final Disposition.

(1) Unless otherwise provided by law or by order of the court for good cause shown, no proceedings for enforcement of final agency action ordering monetary payment may be taken until the expiration of thirty (30) days after (a) the final agency action is taken or (b) the disposition of a motion for reconsideration of the final agency action made under Section 25-43-4.219, whichever last occurs.

(2) Unless otherwise provided by law, the agency may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

(3) A party may move the court, during the pendency of judicial review, for interlocutory review of the agency’s action on an application for stay or other temporary remedies.

(4) If the agency has found that its action on an application for stay or other temporary remedies is justified to protect against a clear and present threat to the public health, safety, or welfare, the court may not grant relief unless it finds that:

(a) The applicant is likely to prevail when the court finally disposes of the matter;
(b) Without relief the applicant will suffer irreparable injury;
(c) The grant of relief to the applicant will not substantially harm other parties to the proceedings; and
(d) The threat to the public health, safety or welfare relied on by the agency is not sufficiently serious to justify the agency’s action in the circumstances.
(5) If subsection (4) of this section does not apply, the
court shall grant relief if it finds that the agency’s action on
the application for stay or the terms thereof or other temporary
remedies was unreasonable in the circumstances.

(6) If the court determines that relief should be granted
from the agency’s action on an application for stay or other
temporary remedies, the court may remand the matter to the agency
with directions to deny a stay, to grant a stay on appropriate
terms, or to grant other temporary remedies, or the court may
issue an order denying a stay, granting a stay on appropriate
terms, or granting other temporary remedies.

SECTION 75. The following shall be codified as Section
25-43-5.112, Mississippi Code of 1972:


(1) A person may obtain judicial review of an issue that was
not raised before the agency, only to the extent that:

(a) The agency did not have jurisdiction to grant an
adequate remedy based on a determination of the issue; and

(b) The agency action subject to judicial review is a
rule, and the person has not been a party in adjudicative
proceedings that provided an adequate opportunity to raise the
issue.

(2) The court may notice plain error as in other cases.

SECTION 76. The following shall be codified as Section
25-43-5.113, Mississippi Code of 1972:

25-43-5.113. Judicial Review of Facts Confined to Record for
Judicial Review and Additional Evidence Taken Pursuant to Act.

Judicial review of disputed issues of fact must be confined
to the agency record for judicial review as defined in this
chapter, supplemented by additional evidence taken pursuant to
this chapter or judicially noticed consistent with Section
25-43-4.213(7).

SECTION 77. The following shall be codified as Section
25-43-5.114, Mississippi Code of 1972:

25-43-5.114. New Evidence Taken by Court or Agency Before Final Disposition.

(1) The court, in its discretion assisted by the agency or by a master as provided in Section 25-43-5.104(2), may receive evidence, in addition to that contained in the agency record for judicial review, only if it relates to the validity of the agency action at the time it was taken and is needed to decide disputed issues regarding:

(a) Improper constitution as a decision-making body, or improper motive or behavior on grounds for disqualification, of those taking the agency action;

(b) The apparent reliance by the agency taking the agency action on facts or evidence not included in the record;

(c) Unlawfulness of procedure or of decision-making process;

(d) A failure by the agency to explain its action where such failure may frustrate judicial review;

(e) The explanation of technical terms or complex subjects;

(f) The apparent failure of the agency to consider adequately some reasonable alternative to the agency action; or

(g) Any material fact that was not required by any provision of law to be determined exclusively on an agency record of a type reasonably suitable for judicial review.

(2) The court may remand a matter to the agency or a master, before final disposition of a proceeding for judicial review, with directions that the agency conduct fact-finding and other proceedings the court considers necessary, within such time limits as the court may prescribe, and that the agency or a master take such further action on the basis thereof as the court directs, if:

(a) The agency was required by this chapter or any other provision of law to base its action on a record of a type
reasonably suitable for judicial review, but the agency failed to prepare or preserve an adequate record;

(b) The court finds that (i) new evidence has become available that relates to the validity of the agency action at the time it was taken, that one or more of the parties did not know and was under no duty to discover, or did not know and was under a duty to discover but could not reasonably have discovered, until after the agency action, and (ii) the interests of justice would be served by remand to the agency;

(c) The agency improperly excluded or omitted evidence from the record; or

(d) A relevant provision of law changed after the agency action and the court determines that the new provision may control the outcome.

(3) The court may take judicial notice of adjudicative facts consistent with the Mississippi Rules of Evidence and Section 25-43-4.213(g).

SECTION 78. The following shall be codified as Section 25-43-5.115, Mississippi Code of 1972:


(1) In the event of judicial review of agency action, the agency shall have full and exclusive authority and responsibility of preparing the agency record and certifying the agency record to the court. Subject only to the limitations of this part, an agency may by rule provide the formal process for its preparation and certification of the agency record.

(2) Within thirty (30) days after service of notice of judicial review, or within further time allowed by the court or by other provision of law, the agency shall transmit to the clerk of the Court of Appeals the agency record certified by the agency for judicial review of the agency action, consisting of any agency documents expressing the agency action, other documents identified
by the agency as having been considered by it before its action
and used as a basis for its action, and any other material
described in this chapter as the agency record for the type of
agency action at issue, subject to the provisions of this section.

(3) If part of the record has been preserved without a
transcript, the agency shall prepare a transcript for inclusion in
the record transmitted to the court, except for portions that the
parties stipulate to omit in accordance with subsection (5) of
this section. The word “transcript” includes a written
transcript, a printed transcript, and an audible audiotape or
videotape that is indexed and annotated so that it is readily
accessible.

(4) The agency may charge the person filing the notice of
judicial review with the reasonable cost of preparing the record
and any necessary copies and transcripts for transmittal to the
court. A failure by the person seeking judicial review to pay any
of this cost to the agency does not relieve the agency from the
responsibility for timely preparation of the record, including any
transcript and transmittal to the court. The agency may set
criteria and terms for payment of costs of the record. The agency
may by rule implement and elaborate this subsection.

(5) By stipulation of all parties to the review proceedings,
the record may be shortened, summarized, supplemented or
organized.

(6) The court may tax the cost of preparing transcripts and
copies for the record:

(a) Against a party who unreasonably refuses to
stipulate to shorten, summarize, or organize the record;

(b) As provided by Section 25-43-5.117; or

(c) In accordance with any other provision of law.

(7) Additions to the record pursuant to Section 25-43-5.114
must be made as ordered by the court.

(8) The court may require or permit subsequent corrections
or additions to the record.

SECTION 79. The following shall be codified as Section 25-43-5.116, Mississippi Code of 1972:


(1) Except to the extent that this chapter provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity; and

(b) The validity of agency action must be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken.

(2) The court should make a separate and distinct ruling on each material issue on which the court’s decision is based.

(3) The court shall grant relief from agency action only if it determines that a person seeking judicial relief may have been prejudiced by any one or more of the following:

(a) The agency action, or the law on which the agency action is based, is unconstitutional on its face or as applied.

(b) The agency has acted beyond the jurisdiction conferred by any provision of law.

(c) The agency has not decided all issues requiring resolution.

(d) The agency has erroneously interpreted or applied or failed to apply the law.

(e) The agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure.

(f) The persons taking the agency action were not constituted as a decision-making body as required by law, were motivated by an improper purpose, or were subject to disqualification.

(g) The agency action is based on a determination of fact, made or implied by the agency, that is not supported by
evidence that is substantial when viewed in light of the whole
record before the court, which includes the agency record for
judicial review, supplemented by any additional evidence received
or noticed by the court under this chapter.

(h) The agency action is:

(i) Outside the range of discretion delegated to
the agency law;

(ii) Agency action, other than a rule, that is
inconsistent with a rule of the agency;

(iii) Agency action, other than a rule, that is
inconsistent with the agency’s prior practice unless the agency
justifies the inconsistency by stating facts and reasons to
demonstrate a fair and rational basis for the inconsistency; or

(iv) Otherwise unreasonable, arbitrary or
capricious.

(4) In performing its review under subsection (3) of this
section, the court shall give substantial deference to the view of
the agency with respect to particular matters that have been
vested by a law within the discretion of the agency.

SECTION 80. The following shall be codified as Section
25-43-5.117, Mississippi Code of 1972:

25-43-5.117. Type of Relief.

(1) The court may award damages or compensation only to the
extent expressly authorized by another provision of law.

(2) The court may grant other appropriate relief, whether
mandatory, prohibitory, injunctive or declaratory; preliminary or
final; temporary or permanent; equitable or legal. In granting
relief, the court may order agency action required by law, order
agency exercise of discretion required by law, set aside or modify
agency action, enjoin or stay the effectiveness of agency action,
remand the matter for further proceedings, issue a declaratory
judgment or take any other action that is authorized and
appropriate.
(3) The court may also grant necessary and ancillary relief to redress the effects of agency action wrongfully taken or withheld, but the court may award attorney’s fees or witness fees only to the extent authorized by other law.

(4) If the court sets aside or modifies agency action or remands the matter to the agency for further proceedings, the court may make any interlocutory order it finds necessary to preserve or protect the interests of the parties and the public pending further proceedings or agency action.

SECTION 81. The following shall be codified as Section 25-43-5.118, Mississippi Code of 1972:


Decisions on proceedings for judicial review of agency action made in the Court of Appeals are subject to review in the Supreme Court as provided by the Mississippi Rules of Appellate Procedure.

SECTION 82. The following shall be codified as Section 25-43-5.119, Mississippi Code of 1972:

25-43-5.119. Filed Rate Doctrine.

(1) If a person offering a service to the public:

(a) Is required by law to file with an agency to whose regulatory jurisdiction the person is subject a rate or tariff or the terms or conditions for the provision of that service, and

(b) Has filed with the agency a rate or tariff or the terms or conditions relating in any way to the provision of the service, and the agency has accepted the filing and has not disapproved the filing within the time allowed by law, and the time for judicial review of the agency action in approving or in failing to disapprove the filing has expired, the filing is final and in full force and effect for the period of time provided by law.

(2) A rate or tariff or terms or conditions that have become final, either in the manner described in subsection (1) of this

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section or as a result of being lawfully ordered into effect by
the agency, may be subject to review and reconsideration by the
agency prospectively only and as provided by another provision of
law.

(3) In the case of a rate or tariff or the terms or
conditions for the provision of a service that have become final,
in the manner described in subsection (1) or (2) of this section,
a claim by the agency or by any other person that the rate or
tariff or terms or conditions are invalid or unenforceable for any
of the grounds set forth in Section 25-43-5.116(3)(b), (c), (d),
(e), (f), (g) or (h) may be made only in the form of a request
that the agency, acting prospectively only, review and reconsider
the filing as provided by another provision of law.

(4) The acts or omissions of a person in the provision of a
service pursuant to a filed rate or tariff, or terms or conditions
that have become final in the manner described in subsection (1)
or (2) of this section shall be subject to judicial review, civil
enforcement or collateral attack only on grounds:

(a) (i) The rate or tariff or terms or conditions, or
(ii) the agency action in approving or in failing to disapprove
the rate or tariff or terms, conditions or provisions, or (iii)
the law on which the agency action is based, is unconstitutional
on its face or as applied; or

(b) The person has deviated from the filed rate tariff
or terms or conditions in the provision of the service.

PART II

CIVIL ENFORCEMENT

SECTION 83. The following shall be codified as Section
25-43-5.201, Mississippi Code of 1972:

25-43-5.201. Complaint by Agency for Civil Enforcement of
Rule or Order.

(1) In addition to other remedies provided by law:

(a) An agency may seek enforcement of its rule or
order, including a subpoena or other order compelling the
testimony of persons, the production of documents or other
discovery, by filing a complaint for civil enforcement in the
chancery court.

(b) The complaint must name, as defendants, each person
against whom the agency seeks to obtain civil enforcement.

(c) Venue is determined as in other civil cases.

(d) A complaint for civil enforcement filed by an
agency may request, and the court may grant, declaratory relief,
temporary or permanent injunctive relief, any penalty, sanction or
other civil remedy provided by law or any combination of the
foregoing.

(2) In the case of an order, and in addition to other
remedies provided by law:

(a) A copy of a written order certified by the agency
may be filed in the office of the circuit clerk of any county in
this state. The circuit clerk shall enroll the order in the
judgment roll and shall otherwise treat the order in the same
manner as a judgment of the circuit court of any county in this
state. An order so filed and enrolled has the same effect and is
subject to the same procedures, defenses and proceedings for
reopening, vacating or staying as a judgment of a circuit court of
any county in this state and may be enforced or satisfied in like
manner.

(b) At the time of the filing of the order with the
circuit clerk, the agency, party or person filing same shall serve
notice of the filing upon each party or person against whom
enforcement is sought in the manner provided for service of papers
in a civil action by the Mississippi Rules of Civil Procedure.

SECTION 84. The following shall be codified as Section
25-43-5.202, Mississippi Code of 1972:

25-43-5.202. Complaint by Qualified Person for Civil
Enforcement of Agency’s Order.
Any person who would qualify under this chapter as having standing to seek judicial review of an agency’s failure to enforce its order may file a complaint for civil enforcement of that order in the chancery court, but the action may not be commenced:

(a) Until at least thirty (30) days after the person has given notice of the alleged violation or failure and of the person’s intent to seek civil enforcement to the agency head of the agency that issued the order, to the Attorney General, and to each person against whom the person filing the complaint seeks civil enforcement;

(b) If the agency has filed and is diligently prosecuting a complaint for civil enforcement of the same order against the same defendant or defendants; provided, however, that the person may move to intervene in the pending civil enforcement proceeding as provided by the Mississippi Rules of Civil Procedure; or

(c) If a notice of judicial review of the same order has been filed and is pending in court; provided, however, that the person may move to intervene in the pending judicial review proceeding if the person has standing under Section 25-43-5.106 or as provided by the Mississippi Rules of Appellate Procedure.

The complaint must name, as defendants, the agency whose order is sought to be enforced and each person against whom the person filing the complaint seeks civil enforcement. The court may realign the parties as may be appropriate.

(3) The agency whose order is sought to be enforced may move to dismiss on the grounds that the complaint fails to qualify under this section or that enforcement would be contrary to the lawful policy of the agency. The court shall grant the motion to dismiss unless the person filing the complaint demonstrates that (i) the complaint qualifies under this section and (ii) the agency’s failure to enforce its order is based on an exercise of...
discretion that is improper on one or more of the grounds provided
in Section 25-43-5.116(3)(h).

(4) Except to the extent authorized by law, a complaint for
civil enforcement filed under this part may not request, and the
court may not grant, any monetary relief or require any monetary
payment apart from taxable costs.

SECTION 85. The following shall be codified as Section
25-43-5.203, Mississippi Code of 1972:

25-43-5.203. Defenses; Limitation on New Issues and New
Evidence.

(1) A defendant, who would be qualified under Sections
25-43-5.106, 25-43-5.107 and 25-43-5.108 to do so in a proceeding
for judicial review, may assert, in a proceeding for civil
enforcement:

(a) That the rule or order sought to be enforced is
invalid on any of the grounds stated in Section 25-43-5.116(3) and
(4). If that defense is raised, the court may consider issues and
receive evidence only within the limitations provided by Sections
25-43-5.112, 25-43-5.113 and 25-43-5.114; and

(b) Any of the following defenses on which the court, to the extent necessary for the determination of the matter, may
take new evidence:

(i) The rule or order does not apply to the party;

(ii) The party has not violated the rule or order;

(iii) The party has violated the rule or order but has subsequently complied, but a party who establishes this
defense is not necessarily relieved from any sanction provided by
law for past violations; or

(iv) Other defenses, if any, allowed by law.

(2) Except as expressly provided in this section, a
defendant may not assert as a defense in a proceeding for civil
enforcement any fact or issue that the defendant had an
opportunity to assert before the agency or a court on judicial
review and did not, or upon which the final determination of the agency or court on judicial review was adverse to the defendant.

SECTION 86. The following shall be codified as Section 25-43-5.204, Mississippi Code of 1972:


Proceedings for civil enforcement are governed by:

(a) The Mississippi Rules of Civil Procedure;

(b) The Mississippi Rules of Evidence;

(c) Any other valid and applicable rule of practice or procedure; and

(d) Unless inconsistent with a rule or rules by its terms applicable to such proceedings, the provisions of this chapter.

SECTION 87. The following shall be codified as Section 25-43-5.205, Mississippi Code of 1972:

25-43-5.205. Review by Supreme Court.

Judgments and orders on complaints for civil enforcement are reviewable by the Supreme Court or by the Court of Appeals, as in other civil cases.

SECTION 88. Sections 25-43-1, 25-43-3, 25-43-5, 25-43-6, 25-43-7, 25-43-9, 25-43-11, 25-43-13, 25-43-15, 25-43-17 and 25-43-19, Mississippi Code of 1972, which create the Mississippi Administrative Procedures Law, provide definitions for terms used in such law, prescribe procedures that must be followed by agencies in the adoption, amendment and repeal of agency rules, require the filing of an economic impact statement for the adoption of a rule, require filing and notice before such rules may become effective, require agencies to index all effective rules adopted, provide that revocation or suspension of any license shall not be effective unless notice of such intended action is given to the licensee, and require agencies to adopt procedures to assure that opponents of proposed rules have the
opportunity to present their views and review adverse rulings, are repealed.

SECTION 89. Sections 37-45-39, 37-45-59 and 37-45-61, Mississippi Code of 1972, which provide for the preservation of the reporter's notes, transcription and preparation of the record for appeal, and further appeal to the Supreme Court in certain hearings held before the State Department of Education, are repealed.

SECTION 90. Section 41-51-27, Mississippi Code of 1972, which deals with the record in hearings held under the Animal and Poultry By-Products Disposal Law of 1964, is repealed.

SECTION 91. Sections 49-27-43, 49-27-45 and 49-27-47, Mississippi Code of 1972, which deal with appeal to the chancery court under the provisions of the Coastal Protection Wetlands Act, are repealed.

SECTION 92. Section 53-1-45, Mississippi Code of 1972, which deals with appeals to the Supreme Court in the matter of a hearing held before the State Oil and Gas Board, is repealed.

SECTION 93. Sections 63-17-91 and 63-17-93, Mississippi Code of 1972, which deal with hearings held under the Mississippi Motor Vehicle Commission Law, are repealed.

SECTION 94. Section 65-2-17, Mississippi Code of 1972, which deals with the appeal to the Supreme Court from a decision of the circuit court in an appeal from a hearing held by the state highway arbitration board, is repealed.

SECTION 95. Section 83-53-35, Mississippi Code of 1972, which prescribes the issuance of an order following a hearing before the Commissioner of Insurance concerning credit life and credit disability insurance, is repealed.

SECTION 96. Every agency as defined in this act shall, no later than July 1, 2002, file with the Secretary of the Senate and the Clerk of the House a report which outlines any conflicts between this act and any other laws affecting the agency. This
report shall include proposed legislation to bring the other laws into conformity with the requirements of this act. The Secretary of State shall, no later than July 1, 2000, file with the Secretary of the Senate and the Clerk of the House a list of sections which the Secretary of State believes conflict with this act. The Secretary of the Senate and the Clerk of the House shall maintain a list of agencies which have complied with this section.

SECTION 97. Section 96 of this act shall take effect and be in force from and after its passage. The remainder of this act shall take effect and be in force from and after July 1, 2003.