

By: Bryan

To: Judiciary

SENATE BILL NO. 2756

1 AN ACT TO CREATE THE "MISSISSIPPI ADMINISTRATIVE PROCEDURES
2 LAW"; TO DEFINE CERTAIN TERMS AS USED IN THE ACT; TO PRESCRIBE THE
3 ACT'S APPLICABILITY AND RELATION TO OTHER LAWS; TO PROVIDE FOR THE
4 SUSPENSION OF THE ACT'S PROVISIONS WHEN NECESSARY TO AVOID LOSS OF
5 FEDERAL FUNDS OR SERVICES; TO PRESCRIBE HOW RIGHTS UNDER THE ACT
6 MAY BE WAIVED, HOW MATTERS MAY BE SETTLED INFORMALLY UNDER THE ACT
7 AND HOW PROCEEDINGS UNDER THE ACT MAY BE CONVERTED TO ANOTHER TYPE
8 OF AGENCY PROCEEDING; TO PRESCRIBE THE MANNER OF SERVICE AND
9 COMPUTATION OF TIME UNDER THE ACT; TO PROVIDE FOR THE PUBLICATION,
10 COMPILATION, INDEXING AND PUBLIC INSPECTION OF AGENCY RULES AND
11 ORDERS; TO ESTABLISH A RIGHT AND PRESCRIBE THE PROCEDURE FOR
12 REQUESTING DECLARATORY OPINIONS FROM STATE AGENCIES WITH REGARD TO
13 THE APPLICABILITY AND EFFECT OF AGENCY RULES; TO REQUIRE EVERY
14 AGENCY TO ADOPT CERTAIN RULES RELATING TO THE AGENCY'S
15 ORGANIZATIONAL STRUCTURE; TO REQUIRE THE SECRETARY OF STATE TO
16 ADOPT MODEL RULES OF PROCEDURE FOR USE BY STATE AGENCIES; TO
17 PROVIDE FOR NOTICE OF PROPOSED RULES BEFORE THEIR ADOPTION; TO
18 ALLOW PUBLIC PARTICIPATION IN THE RULE-MAKING PROCESS; TO PROVIDE
19 FOR A PUBLIC RULE-MAKING DOCKET; TO REQUIRE SUBMISSION OF A
20 REGULATORY ANALYSIS OF PROPOSED RULES IN CERTAIN SITUATIONS; TO
21 PROVIDE FOR THE TIME AND MANNER OF RULE ADOPTION; TO PROHIBIT ANY
22 VARIANCE BETWEEN AN ADOPTED RULE AND PUBLISHED NOTICE OF THE
23 RULE'S ADOPTION; TO EXEMPT CERTAIN RULES FROM PROCEDURES PROVIDED
24 IN THE ACT; TO PRESCRIBE THE CONTENTS, STYLE AND FORM OF RULES; TO
25 REQUIRE AGENCIES TO MAINTAIN A RULE-MAKING RECORD AND TO FILE
26 RULES IN THE OFFICE OF THE SECRETARY OF STATE; TO PRESCRIBE THE
27 METHOD FOR CONTESTING THE VALIDITY OF RULES; TO PROVIDE FOR THE
28 EFFECTIVE DATE OF RULES; TO PROVIDE THAT THE ACT SHALL BE
29 INAPPLICABLE TO CERTAIN CLASSES OF RULES; TO AUTHORIZE PETITIONS
30 FOR THE ADOPTION, AMENDMENT, REPEAL OR WAIVER OF A RULE; TO
31 REQUIRE EACH AGENCY TO PERIODICALLY REVIEW ITS RULES; TO PRESCRIBE
32 WHEN ADJUDICATIVE PROCEEDINGS ARE REQUIRED, AND WHEN COMMENCED; TO
33 CREATE EXCEPTIONS; TO ESTABLISH TIME LIMITS; TO REQUIRE A LICENSEE
34 TO BE GIVEN NOTICE OF ANY INTENDED REVOCATION, SUSPENSION,
35 ANNULMENT OR WITHDRAWAL OF HIS LICENSE EXCEPT IN CASE OF
36 EMERGENCY; TO PROVIDE FOR INFORMAL SETTLEMENT, ALTERNATIVE DISPUTE
37 RESOLUTION AND WAIVER; TO PRESCRIBE THE REQUIREMENTS FOR A FORMAL
38 ADJUDICATIVE HEARING, THE PRESIDING OFFICER AND REPRESENTATION; TO
39 PROVIDE FOR THE AVAILABILITY OF A PREHEARING CONFERENCE, NOTICE
40 THEREOF AND PROCEDURE THEREFOR; TO PRESCRIBE RULES OF PROCEDURE;
41 TO PROVIDE FOR REVIEW; TO CREATE THE DIVISION OF INDEPENDENT
42 HEARING OFFICERS; TO PROVIDE FOR INFORMAL ADJUDICATIVE HEARINGS
43 AND PRESCRIBE RULES OF PROCEDURE; TO PRESCRIBE WHEN BASIC
44 ADJUDICATIVE PROCEEDING IS SUFFICIENT AND TO PROVIDE RULES OF
45 PROCEDURE THEREFOR, APPEAL THEREFROM, AND FOR ADMINISTRATIVE
46 REVIEW; TO PROVIDE FOR EMERGENCY ADJUDICATIVE PROCEEDINGS; TO
47 PROVIDE FOR JUDICIAL REVIEW; TO PRESCRIBE RELIEF THAT MAY BE
48 GRANTED; TO PROVIDE FOR CIVIL ENFORCEMENT; TO PROVIDE THAT
49 STATUTORY PROVISIONS THAT CONFLICT WITH THE PROVISIONS OF THIS ACT
50 SHALL GOVERN TO THE EXTENT OF SUCH CONFLICT; TO PRESCRIBE THE

PROCEEDINGS TO WHICH THIS ACT IS APPLICABLE; TO REPEAL 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; TO REPEAL 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; TO REPEAL 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; TO REPEAL 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; TO REPEAL 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; TO REPEAL SECTIONS 63-17-91 AND 63-17-93, MISSISSIPPI CODE OF 1972, WHICH DEAL WITH HEARINGS HELD UNDER THE MISSISSIPPI MOTOR VEHICLE COMMISSION LAW; TO REPEAL 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; TO REPEAL 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; AND FOR RELATED PURPOSES.

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:

25-43-1.105. **Waiver of Rights.**

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:

25-43-2.101. **Publication, Compilation, Indexing and Public
Inspection of Rules.**

(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:

25-43-2.102. Public Inspection and Indexing of Agency Orders.

(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:

25-43-2.103. Declaratory Opinions.

(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

564 written requests and (c) the disposition of the written requests.

565 Those rules must describe the classes of circumstances in which
566 the agency will not issue a declaratory opinion.

567 (3) Within forty-five (45) days after receipt of a written
568 request for a declaratory opinion an agency, in writing, shall:

569 (a) Issue an opinion declaring the applicability of the
570 statute, rule or order in question to the specified circumstances;

571 (b) Agree to issue a declaratory opinion by a specified
572 time but no later than ninety (90) days after receipt of the
573 written request; or

574 (c) Decline to issue a declaratory opinion, stating the
575 reasons for its action.

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

579 (5) (a) When any person receives a declaratory opinion from
580 an agency and shall have stated all the facts to govern such
581 opinion, there shall be no liability, civil or criminal, accruing
582 to or against any such person who, in good faith, follows the
583 direction of such opinion and acts in accordance therewith unless
584 a court of competent jurisdiction, after a full hearing, shall
585 judicially declare that such opinion is manifestly wrong and
586 without any substantial support. No declaratory opinion shall be
587 given or considered if the opinion is requested after suit is
588 filed or prosecution begun.

589 (b) The authority of persons to request and receive
590 agency declaratory opinions in no way affects the ability of any
591 person authorized by Section 7-5-25 to request a legal opinion
592 from the Attorney General.

593 (c) Each agency shall make all declaratory opinions
594 available for public inspection and copying and shall index them
595 by name and subject, unless information contained within such
596 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:

25-43-2.104. **Required Rule Making.**

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:

25-43-2.105. **Model Rules of Procedure.**

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:

25-43-3.101. **Advice on Possible Rules before Notice of Proposed Rule Adoption.**

(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:

25-43-3.102. **Public Rule-making Docket.**

(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

663 opportunity to make oral presentations on the proposed rule may be
664 inspected;

665 (d) The time during which written submissions may be
666 made;

667 (e) If applicable, where and when oral presentations
668 may be made;

669 (f) Where any economic impact statement and written
670 requests for the issuance of and other information concerning an
671 economic impact statement of the proposed rule may be inspected;

672 (g) The current status of the proposed rule;

673 (h) The date of the rule's adoption; and

674 (i) When the rule will become effective.

675 SECTION 14. The following shall be codified as Section
676 25-43-3.103, Mississippi Code of 1972:

677 25-43-3.103. **Notice of Proposed Rule Adoption.**

678 (1) At least twenty-five (25) days before the adoption of a
679 rule an agency shall cause notice of its contemplated action to be
680 properly filed with the Secretary of State for publication in the
681 administrative bulletin. The notice of proposed rule adoption
682 must include:

683 (a) A short explanation of the purpose of the proposed
684 rule and the agency's reasons for proposing the rule;

685 (b) The specific legal authority authorizing the
686 proposed rule;

687 (c) A reference to all rules repealed, amended or
688 suspended by the proposed rule;

689 (d) Subject to Section 25-43-2.101(5), the text of the
690 proposed rule;

691 (e) Where, when and how persons may present their views
692 on the proposed rule; and

693 (f) Where, when and how persons may demand an oral
694 proceeding on the proposed rule if the notice does not already
695 provide for one.

(2) 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:

25-43-3.104. **Public Participation.**

(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.

(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

762 which will likely accrue as the result of the proposed action;

763 (b) An estimate of the cost to the agency, and to any
764 other state or local government entities, of implementing and
765 enforcing the proposed action, including the estimated amount of
766 paperwork, and any anticipated effect on state or local revenues;

767 (c) An estimate of the cost or economic benefit to all
768 persons directly affected by the proposed action;

769 (d) An analysis of the impact of the proposed rule on
770 small business;

771 (e) A comparison of the costs and benefits of the
772 proposed rule to the probable costs and benefits of not adopting
773 the proposed rule or significantly amending an existing rule;

774 (f) A determination of whether less costly methods or
775 less intrusive methods exist for achieving the purpose of the
776 proposed rule where reasonable alternative methods exist which are
777 not precluded by law;

778 (g) A description of reasonable alternative methods,
779 where applicable, for achieving the purpose of the proposed action
780 which were considered by the agency and a statement of reasons for
781 rejecting those alternatives in favor of the proposed rule; and

782 (h) A detailed statement of the data and methodology
783 used in making estimates required by this subsection.

784 (3) No rule or regulation shall be declared invalid based on
785 a challenge to the economic impact statement for the rule unless
786 the issue is raised in the agency proceeding. No person shall
787 have standing to challenge a rule, based upon the economic impact
788 statement or lack thereof, unless that person provided the agency
789 with information sufficient to make the agency aware of specific
790 concerns regarding the statement in an oral proceeding or in
791 written comments regarding the rule. The grounds for invalidation
792 of an agency action, based upon the economic impact statement, are
793 limited to the agency's failure to adhere to the procedure for
794 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.

(2) 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.

(3) 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.

(4) 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:

25-43-3.107. 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:

25-43-3.108. Exemption from Public Rule-making Procedures 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 requirements of Sections 23-43-3.103 through 25-43-3.107.

(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:

25-43-3.109. **Contents, Style, and Form of Rule.**

(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:

25-43-3.110. **Agency Rule-making Record.**

(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

960 rule is based;

961 (b) Copies of any portions of the agency's public
962 rule-making docket containing entries relating to the rule or the
963 proceeding upon which the rule is based;

964 (c) All written petitions, requests, submissions and
965 comments received by the agency and all other written materials
966 considered by the agency in connection with the formulation,
967 proposal or adoption of the rule or the proceeding upon which the
968 rule is based;

969 (d) Any official transcript of oral presentations made
970 in the proceeding upon which the rule is based or, if not
971 transcribed, any tape recording or stenographic record of those
972 presentations, and any memorandum prepared by a presiding official
973 summarizing the contents of those presentations. The word
974 "transcript" includes a written transcript, a printed transcript,
975 an audible audiotape or videotape that is indexed and annotated so
976 that it is readily accessible and any other means that the agency
977 may have by rule provided for the reliable and accessible
978 preservation of the proceeding;

979 (e) A copy of any economic impact statement prepared
980 for the proceeding upon which the rule is based;

981 (f) A copy of the rule and related information set out
982 in Section 25-43-3.109 as filed in the Office of the Secretary of
983 State; and

984 (g) All petitions for exceptions to, amendments of, or
985 repeal or suspension of, the rule.

986 (3) The agency shall have authority to engage such persons
987 and acquire such equipment as may be reasonably necessary to
988 record and preserve in any technically and practicably feasible
989 manner all matters and all proceedings had at any rule-making
990 proceeding.

991 (4) Upon judicial review, the record required by this
992 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:

1026 25-43-3.113. **Effective Date of Rules.**

1027 (1) Except to the extent subsection (2) or (3) of this
1028 section provides otherwise, each rule adopted after July 1, 2000,
1029 becomes effective thirty (30) days after its proper filing in the
1030 Office of the Secretary of State.

1031 (2) (a) A rule becomes effective on a date later than that
1032 established by subsection (1) of this section if a later date is
1033 required by another statute or specified in the rule.

1034 (b) A rule may become effective immediately upon its
1035 filing or on any subsequent date earlier than that established by
1036 subsection (1) of this section if the agency establishes such an
1037 effective date and finds that:

1038 (i) It is required by constitution, statute or
1039 court order;

1040 (ii) The rule only confers a benefit or removes a
1041 restriction on the public or some segment thereof;

1042 (iii) The rule only delays the effective date of
1043 another rule that is not yet effective; or

1044 (iv) The earlier effective date is necessary
1045 because of imminent peril to the public health, safety or welfare.

1046 (c) The finding and a brief statement of the reasons
1047 therefor required by paragraph (b) of this subsection must be made
1048 a part of the rule. In any action contesting the effective date
1049 of a rule made effective under paragraph (b) of this subsection,
1050 the burden is on the agency to justify its finding.

1051 (d) A temporary rule may become effective immediately
1052 upon its filing or on any subsequent date earlier than that
1053 established by subsection (1) of this section.

1054 (e) Each agency shall make a reasonable effort to make
1055 known to persons who may be affected by it a rule made effective
1056 before any date established by subsection (1) of this section.

1057 (3) This section does not relieve an agency from compliance
1058 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:

25-43-3.114. **Review by Agency.**

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:

25-43-4.101. **Adjudicative Proceedings - When Required; 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

1092 interested person;

1093 (f) To take an agency action where after the agency
1094 action is taken by law there is provided an opportunity for the
1095 person affected for an adjudicative proceeding before the
1096 Mississippi Employee Appeals Board;

1097 (g) To issue an order granting the request of the
1098 agency staff which may take effect only upon authorization by the
1099 agency head;

1100 (h) To take an action with respect to a prisoner,
1101 student, public employee or a licensee without continuing or
1102 permanent impact thereafter, such as a reprimand, warning,
1103 disciplinary report or purely verbal sanction without continuing
1104 impact;

1105 (i) To take an action with respect to a student that is
1106 not a suspension or expulsion from school or does not affect a
1107 grade or academic credit to which the student would otherwise be
1108 entitled;

1109 (j) To open or close a season for hunting or fishing,
1110 or to set limits for kill or catch;

1111 (k) To restrict access to levees protecting against
1112 rivers at flood stage;

1113 (l) Under Sections 93-11-155 et seq., to suspend a
1114 state-issued license;

1115 (m) To acquire, administer or dispose of interests in
1116 real or personal property, except where by another provision of
1117 law a party with standing may complain of agency action; or

1118 (n) To take action in a nonregulatory matter which is
1119 in the normal scope of business of the agency, including entering
1120 into contracts or agreements with any other state or federal
1121 agency, or with any private person, organization or group capable
1122 of contracting, if it finds such action to be in the public
1123 interest, except where by another provision of law a party with
1124 standing may complain of agency action; to accept gifts, trusts,

1125 bequests, grants, endowments or transfers of property of any kind;
1126 to receive monies coming to it by way of fees for services or by
1127 appropriations; to employ, qualified professional personnel, and
1128 such other technical and clerical staff as may be required for the
1129 operation of the agency.

1130 (2) This article does not apply to rule-making proceedings
1131 unless a statute other than contained in this chapter expressly so
1132 requires.

1133 (3) This article does not apply to a public hearing held by
1134 an agency where the principal purpose of such hearing is to invite
1135 the public to appear and receive information or provide comment on
1136 a proposed agency action.

1137 (4) This article provides minimum standards for adjudicative
1138 proceedings. Nothing in this article provides that an agency may
1139 not employ additional procedures as may be required or permitted
1140 by other law, including valid agency rules that the agency may
1141 make, so long as the rights conferred by this article are not
1142 prejudiced.

1143 (5) Except as provided otherwise in this chapter or another
1144 provision of law, an agency may conduct an adjudicative proceeding
1145 as the process for resolving any matter within the jurisdiction of
1146 the agency. If an agency commences an adjudicative proceeding in
1147 any matter, that proceeding shall be governed by this article
1148 unless the parties agree otherwise.

1149 (6) In the case of an agency that is subject to the
1150 regulatory requirements of an agency or department of the United
1151 States, an adjudicative proceeding conducted by the state agency
1152 that conforms to the requirements of the agency or department of
1153 the United States that the state agency is mandated to follow may,
1154 at the election of the state agency made in advance of the
1155 proceeding, be deemed to satisfy the requirements of this article
1156 respecting adjudicative proceedings, provided that any
1157 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:

25-43-4.102. **Adjudicative Proceedings - Commencement.**

(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

1191 agency to issue an order that may adjudge the applicant's legal
1192 rights, duties, privileges, immunities, or other legal interests;

1193 (e) The applicant claims only (i) that he is a citizen,
1194 a voter, or a taxpayer, or (ii) that he has an interest that the
1195 law be enforced, and nothing more;

1196 (f) The matter was not timely submitted to the agency;
1197 or

1198 (g) The matter was not submitted in a form
1199 substantially complying with any applicable provision of law, and
1200 was not amended within a reasonable time so that it substantially
1201 complies with any applicable provision of law. Any timely
1202 amendment relates back to the date of the original application.

1203 (4) (a) An application for an agency to issue an order is
1204 deemed to include an application for the agency to conduct
1205 appropriate adjudicative proceedings, whether or not the applicant
1206 expressly requests those proceedings.

1207 (b) An application for an agency to conduct an
1208 adjudicative proceeding shall be deemed to include an application
1209 for the agency to issue an appropriate order, whether or not the
1210 applicant expressly requests the agency to issue an order.

1211 (5) An adjudicative proceeding commences when the agency:

1212 (a) Serves notice on a party that a prehearing
1213 conference, hearing, or other stage of an adjudicative proceeding
1214 will be conducted; or

1215 (b) Begins to take action on a matter that
1216 appropriately may be determined by an adjudicative proceeding,
1217 unless the action is:

1218 (i) An investigation for the purpose of
1219 determining whether an adjudicative proceeding should be
1220 conducted; or

1221 (ii) A decision which, under Section
1222 25-43-4.101(1), the agency may make without conducting an
1223 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:

25-43-4.104. **Agency Action on Applications.**

(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:

25-43-4.105. Agency Action Against Licensees.

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:

25-43-4.201. Applicability.

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:

25-43-4.202. Presiding Officer - Disqualification; 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.

1356 (3) Ordinarily, the presiding officer should be, but is not
1357 required to be a person or persons assigned by the Division of
1358 Independent Hearing Officers:

1359 (a) Unless the agency head is the presiding officer, or

1360 (b) Unless the agency is essentially neutral regarding
1361 the outcome of the proceeding and the agency's primary interest is
1362 that the proceeding be fair, speedy and cost-effective;
1363 provided, however, that nothing in this article shall prohibit any
1364 agency from using hearing officers who may be employed or
1365 appointed by the agency. Hearing officers utilized by the agency
1366 who are not employed or otherwise engaged by the division shall
1367 have the same qualifications as those engaged by the division.

1368 (4) Any person serving or designated to serve alone or with
1369 others as presiding officer is subject to disqualification for
1370 bias, prejudice, interest, or any other cause provided in this
1371 chapter or for which a judge is or may be disqualified in a civil
1372 action.

1373 (5) Any party may move to disqualify a person promptly after
1374 receipt of notice indicating that the person will preside or
1375 promptly upon discovering facts establishing grounds for
1376 disqualification, whichever is later.

1377 (6) A person whose disqualification is requested shall
1378 determine whether to grant the motion, stating facts and reasons
1379 for the determination.

1380 (7) If a substitute is required for a person who is
1381 disqualified or becomes unavailable for any other reason, the
1382 substitute may be appointed as provided in subsections (2) and (3)
1383 of this section.

1384 (8) Any action taken by a duly-appointed substitute for a
1385 disqualified or unavailable person is as effective as if taken by
1386 the latter.

1387 SECTION 34. The following shall be codified as Section
1388 25-43-4.203, Mississippi Code of 1972:

1389 25-43-4.203. **Representation.**

1390 (1) Any party may participate in the hearing in person or,
1391 if the party is a corporation or other artificial person, by its
1392 duly authorized representative.

1393 (2) Whether or not participating in person, any party may be
1394 advised and represented at the party's own expense by a lawyer or,
1395 except as limited but not prohibited by agency rule, by any other
1396 representative. The agency may implement this subsection by rule
1397 designating the qualifications of representative(s) that may
1398 appear on behalf of a party and what binding effect the actions of
1399 the representative(s) will have on the party so represented.

1400 (3) Any application, pleading, or other document prepared by
1401 a lawyer or other representative of a party shall contain the
1402 typed or printed name, mailing address (including fax number and
1403 e-mail address, if available), and telephone number of the
1404 preparer.

1405 SECTION 35. The following shall be codified as Section
1406 25-43-4.204, Mississippi Code of 1972:

1407 25-43-4.204. **Prehearing Conference - Availability; Notice.**

1408 (1) Any party may request a prehearing conference. In
1409 response to a request by a party, or on the presiding officer's
1410 own motion, the presiding officer may determine, subject to any
1411 applicable agency rules, that a prehearing conference will be
1412 conducted.

1413 (2) If the prehearing conference is to be conducted:

1414 (a) The presiding officer shall promptly notify the
1415 agency that a prehearing conference will be conducted. The
1416 presiding officer shall conduct the prehearing conference except
1417 as provided by agency rule or unless that presiding officer is
1418 disqualified or becomes unavailable for any other reason.

1419 (b) The presiding officer shall set the time and place
1420 of the prehearing conference, subject to any applicable agency
1421 rules, and direct the agency to serve notice of the prehearing

1422 conference to all parties and to all persons who have motions to
1423 intervene pending in the matter. The agency shall also serve
1424 notice to other persons entitled to notice under any provision of
1425 law or agency rule.

1426 (c) The notice must include:

1427 (i) The official agency file or other reference
1428 number and the style of the proceeding;

1429 (ii) A statement of the time, place, and nature of
1430 the prehearing conference;

1431 (iii) A statement of the legal authority and
1432 jurisdiction under which the hearing is to be held;

1433 (iv) The name, official title, and mailing address
1434 of the presiding officer for the prehearing conference;

1435 (v) The name, official title, and mailing address
1436 (including fax number and e-mail address, if available) of any
1437 counsel or employee who has been designated to appear for the
1438 agency;

1439 (vi) The names and mailing addresses of all
1440 parties and other persons to whom notice is being given;

1441 (vii) The name, official title, mailing address
1442 (including fax number and e-mail address, if available), and
1443 telephone number of the agency employee or other person who may be
1444 able to answer procedural questions about the prehearing
1445 conference;

1446 (viii) A statement that at the prehearing
1447 conference the proceeding, without further notice, may be
1448 converted into an informal adjudicative hearing or basic
1449 adjudicative proceeding for disposition of the matter as provided
1450 by this chapter; and

1451 (ix) A statement with an explanation of its
1452 consequences that a party who fails to attend or participate in a
1453 prehearing conference, hearing, or other stage of an adjudicative
1454 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

1488 hearing as a substitute for proceedings in person;

1489 (m) Order of presentation of evidence and
1490 cross-examination;

1491 (n) Rulings regarding issuance of subpoenas;

1492 (o) Matters regarding discovery, the adequacy of
1493 responses to discovery, orders compelling discovery, or protective
1494 orders as may be appropriate; and

1495 (p) Such other matters as may aid in the conduct of the
1496 proceeding or the disposition of the matter.

1497 (3) If a prehearing conference is held, the presiding
1498 officer shall issue a prehearing order incorporating and
1499 memorializing the matters determined at the prehearing conference.

1500 The presiding officer may require that the agency and the parties
1501 assist in preparing the prehearing order.

1502 (4) If a prehearing conference is not held, the presiding
1503 officer may issue a prehearing order, based on the pleadings, to
1504 regulate the conduct of the proceedings.

1505 (5) Whether a prehearing conference is held or not, the
1506 presiding officer, subject to any applicable agency rules, may
1507 require the parties, jointly or severally, to prepare a prehearing
1508 statement or order addressing such matters as set out in
1509 subsection (2) of this section. Any prehearing statement shall be
1510 included within "prehearing order" for purposes of this article.

1511 SECTION 37. The following shall be codified as Section
1512 25-43-4.206, Mississippi Code of 1972:

1513 25-43-4.206. **Notice of Hearing.**

1514 (1) The presiding officer for the hearing shall set the time
1515 and place of the hearing, subject to any applicable agency rules,
1516 and direct the agency to serve notice of the hearing on all
1517 parties, all persons who have written motions to intervene pending
1518 in the matter, and any other person entitled to notice under any
1519 provision of law.

1520 (2) The notice may include a copy of any prehearing order

1521 issued in the matter.

1522 (3) To the extent not included in a prehearing order
1523 accompanying it, the notice must include:

1524 (a) The official agency file or other reference number
1525 and the style of the proceeding;

1526 (b) A statement of the time, place, and nature of the
1527 hearing;

1528 (c) A statement of the legal authority and jurisdiction
1529 under which the hearing is to be held;

1530 (d) The name, official title, and mailing address of
1531 the presiding officer;

1532 (e) The name, official title, mailing address
1533 (including fax number and e-mail address, if available) and
1534 telephone number of any counsel or employee who has been
1535 designated to appear for the agency;

1536 (f) The names and mailing addresses of all parties and
1537 other persons to whom notice is being given;

1538 (g) The name, official title, mailing address
1539 (including fax number and e-mail address, if available) and
1540 telephone number of the agency employee(s) or other person who may
1541 be able to answer procedural questions about the hearing;

1542 (h) A statement with an explanation of its consequences
1543 that a party who fails to attend or participate in a prehearing
1544 conference, hearing, or other stage of an adjudicative proceeding
1545 may be held in default.

1546 (4) The notice may include any other matters the agency or
1547 presiding officer considers appropriate to expedite and facilitate
1548 the proceedings.

1549 SECTION 38. The following shall be codified as Section
1550 25-43-4.207, Mississippi Code of 1972:

1551 25-43-4.207. **Pleadings; Briefs; Motions.**

1552 (1) The presiding officer, at all stages of the proceedings,
1553 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:

25-43-4.208. **Default.**

(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:

25-43-4.209. Intervention - Persons Needed for Full and Fair Determination.

(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 intervener becomes a person who, pending ruling on the motion,

1620 should receive all notices provided thereafter to parties and all
1621 papers the parties may thereafter file and serve.

1622 (3) The fact that a person moving to intervene in a
1623 proceeding claims (1) that he is a citizen, a voter or a taxpayer
1624 or (2) that he has an interest that the law be enforced is,
1625 without more, insufficient grounds upon which the presiding
1626 officer may grant a motion to intervene.

1627 (4) The presiding officer may grant a motion to intervene at
1628 any time, upon determining that the intervention sought is in the
1629 interests of justice and fairness and will not impair the orderly
1630 and prompt conduct of the proceedings.

1631 (5) An association of persons, some of whose members are
1632 eligible for intervention, may be allowed to intervene upon the
1633 same showing and subject to the same conditions as its members who
1634 may be eligible to intervene.

1635 (6) If a movant qualifies for intervention, the presiding
1636 officer may impose conditions upon the intervener's participation
1637 in the proceedings, subject to any applicable provision of law,
1638 including agency rules, either at the time that intervention is
1639 granted or at any subsequent time. Conditions may include:

1640 (a) Limiting the intervener's participation to
1641 designated issues in which the intervener has a particular
1642 interest;

1643 (b) Limiting the intervener's use of discovery,
1644 subpoenas, cross-examination, and other procedures so as to
1645 promote the orderly and prompt conduct of the proceedings; and

1646 (c) Requiring two (2) or more interveners to combine
1647 their presentations of evidence and argument, cross-examination,
1648 discovery, and other participation in the proceedings.

1649 (7) The presiding officer shall issue an order granting or
1650 denying each pending motion to intervene, specifying any
1651 conditions, and briefly stating the reasons for the order. The
1652 presiding officer may modify the order at any time, briefly

1653 stating the reasons for the order.

1654 (8) A person who is subject to the jurisdiction of the
1655 agency shall be joined as a party in the proceeding if:

1656 (a) In the person's absence complete relief cannot be
1657 accorded among those already parties, or

1658 (b) The person claims an interest relating to the
1659 subject of the proceeding and is so situated that the disposition
1660 of the proceeding in the person's absence may (i) as a practical
1661 matter impair or impede the person's ability to protect that
1662 interest or (ii) leave any of the parties subject to a substantial
1663 risk of incurring double, multiple, or otherwise inconsistent
1664 obligations by reason of the person's claimed interest. If the
1665 person has not been so joined, the presiding officer may order
1666 that the person be made a party and summoned to appear.

1667 (9) After entry of an order allowing intervention or for
1668 joinder, the intervener or the person being joined shall be a
1669 party, subject to any conditions provided under the authority of
1670 subsection (6) of this section.

1671 SECTION 41. The following shall be codified as Section
1672 25-43-4.210, Mississippi Code of 1972:

1673 25-43-4.210. **Subpoenas; Discovery Orders; Protective Orders.**

1674 (1) Prehearing discovery is authorized in formal
1675 adjudicative proceedings under this part. The presiding officer,
1676 at the request of any party or upon the presiding officer's own
1677 motion, and subject to any applicable provision of law, including
1678 agency rules, may but is not required to allow discovery and issue
1679 protective orders, compel discovery, or grant sanctions in
1680 accordance with the Mississippi Rules of Civil Procedure as if the
1681 proceeding were a civil action governed by the Mississippi Rules
1682 of Civil Procedure.

1683 (2) Each agency is authorized to issue subpoenas. The
1684 subpoena power of each agency extends throughout the entire State
1685 of Mississippi. The presiding officer, at the request of any

1686 party shall, or upon the presiding officer's own motion may,
1687 direct the agency to issue subpoenas. Every subpoena shall be
1688 issued by the agency, shall state the name and address of the
1689 agency, the official agency file or other reference number, and
1690 the style of the proceeding, and shall command each person to whom
1691 it is directed to attend and give testimony, or to produce and
1692 permit inspection, testing and copying of designated books,
1693 documents or tangible things in the possession, custody or control
1694 of that person, or to which that person has reasonable access, or
1695 to permit inspection or testing of premises, at a time that may be
1696 before or at a hearing and at a place therein specified. Pursuant
1697 to agency rule, the subpoena may be issued by the person
1698 designated by agency rule to issue subpoenas on behalf of the
1699 agency or by the presiding officer, but otherwise in blank, to a
1700 party requesting it, who shall fill it in before service. A
1701 command to produce evidence or to permit inspection may be joined
1702 with a command to appear at hearing or at deposition, or may be
1703 issued separately.

1704 (3) Subpoenas and other orders issued under this section may
1705 be enforced pursuant to the provisions of this chapter on civil
1706 enforcement of agency action. A subpoena shall be treated as an
1707 order for purposes of civil enforcement subpoenas.

1708 (4) Witnesses subpoenaed to appear in agency proceedings
1709 shall receive at least the same fees and mileage as witnesses in
1710 civil actions in courts of record.

1711 (5) A subpoena may be served by a sheriff, or by sheriff's
1712 deputy, or by a representative of the agency, or by any other
1713 person who is not less than eighteen (18) years of age, and his or
1714 her return endorsed thereon shall be prima facie proof of service,
1715 or the person served may acknowledge service in writing on the
1716 subpoena. Service of the subpoena shall be executed upon the
1717 witness personally. Proof of service shall be made by filing with
1718 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:

25-43-4.212. **Procedure at Hearing.**

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

1785 affirmation.

1786 (d) The presiding officer may conduct all or part of
1787 the hearing by telephone, television, or other electronic means,
1788 if each participant in the hearing has an opportunity to
1789 participate in, to hear, and, if technically and practicably
1790 feasible, to see the entire proceeding while it is taking place.

1791 (e) The presiding officer shall cause all proceedings
1792 at the hearing to be recorded and preserved, stenographically,
1793 mechanically or electronically, by any means technically and
1794 practicably feasible, and at the agency's expense. The agency is
1795 not required, at its expense, to prepare a transcript, unless
1796 required to do so by a provision of law. Upon written request,
1797 the agency shall make available to any party to the proceeding,
1798 for a reasonable cost of reproduction, a copy of any electronic
1799 recording of the proceeding. Any party, at the party's expense,
1800 may cause a qualified reporter to prepare a transcript from the
1801 agency's record or to appear at the hearing to record the
1802 proceedings stenographically, or cause additional electronic
1803 recordings to be made during the hearing if the making of the
1804 additional recordings does not cause undue distraction or
1805 disruption.

1806 (f) The hearing is open to public observation, except
1807 for the parts that the presiding officer rules should be closed
1808 pursuant to a provision of law authorizing closure, imposing
1809 confidentiality requirements or protecting privacy rights. To the
1810 extent that a hearing is conducted by telephone, television, or
1811 other electronic means, and is not closed, the availability of
1812 public observation is satisfied by giving members of the public an
1813 opportunity, at reasonable times, to hear or inspect the agency's
1814 record, and to inspect any transcript obtained by the agency.
1815 Members of the public, including the news media, may record,
1816 photograph, broadcast, videotape or telecast all or any part of
1817 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:

25-43-4.213. **Evidence; Official Notice.**

(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

1851 recognized in the courts of this state, or any other provision of
1852 law imposing confidentiality requirements or protecting privacy
1853 rights. In the absence of proper objection, the presiding officer
1854 acting *sus spote* may exclude evidence that is redundant,
1855 repetitious or otherwise objectionable. Evidence may not be
1856 excluded solely because it is hearsay. If evidence is excluded by
1857 the hearing officer, the party offering the evidence may make an
1858 offer of proof for the record.

1859 (3) All testimony of parties and witnesses must be made
1860 under oath or affirmation.

1861 (4) Statements presented by nonparties in accordance with
1862 Section 25-43-4.212(c) may be received as evidence.

1863 (5) Subject to any applicable provision of law, including
1864 agency rule, any part of the testimony or other evidence may be
1865 received in written form, including prefiled direct testimony of
1866 witnesses who will appear at the hearing, if doing so will
1867 expedite the hearing without substantial prejudice to the
1868 interests of any party, subject to any applicable agency rule.

1869 (6) Documentary evidence may be received in the form of a
1870 copy or excerpt. Upon request, parties must be given an
1871 opportunity to compare the copy with the original if available.

1872 (7) Official notice may be taken of (a) any fact that could
1873 be judicially noticed in the courts of this state, (b) the record
1874 of other proceedings before the agency, (c) technical or
1875 scientific matters within the agency's specialized knowledge, and
1876 (d) codes or standards that have been adopted by an agency of the
1877 United States, of this state or of another state, or by a
1878 nationally recognized organization or association. Parties must
1879 be notified before or during the hearing, or before the issuance
1880 of any initial or final order that is based in whole or in part on
1881 facts or material noticed, of the specific facts or material
1882 noticed and the source thereof, including any staff memoranda and
1883 data, and be afforded an opportunity to contest and rebut the

1884 facts or material so noticed.

1885 (8) The presiding officer should consider the agency's
1886 expertise, technical competence, and specialized knowledge in the
1887 evaluation of the evidence.

1888 SECTION 45. The following shall be codified as Section
1889 25-43-4.214, Mississippi Code of 1972:

1890 25-43-4.214. **Ex parte Communications.**

1891 (1) Except as provided in subsection (2) or (3) of this
1892 section or unless required for the disposition of ex parte matters
1893 specifically authorized by statute, a presiding officer serving in
1894 an adjudicative proceeding, and any person or persons with
1895 authority to determine the outcome of such proceeding, or the
1896 agency head that may eventually review the matter on behalf of the
1897 agency, may not communicate, directly or indirectly, regarding any
1898 issue in the proceeding, while the proceeding is pending at either
1899 the adjudicative level or agency review level, with any party,
1900 with any representative of a party, with any person who has a
1901 direct or indirect interest in the outcome of the proceeding, or
1902 with any person who presided at a previous stage of the
1903 proceeding, without notice and opportunity for all parties to
1904 participate in the communication.

1905 (2) A presiding officer or any other person within
1906 subsection (1) may communicate with a party or representative
1907 regarding scheduling of hearings or other routine ministerial
1908 details not bearing on the issues in the proceeding.

1909 (3) A member of a multi-member panel of presiding officers
1910 may communicate with other members of the panel regarding a matter
1911 pending before the panel, and any presiding officer may receive
1912 aid from staff assistants if the assistants do not (a) receive ex
1913 parte communications of a type that the presiding officer would be
1914 prohibited from receiving or (b) furnish, augment, diminish, or
1915 modify the evidence in the record.

1916 (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:

25-43-4.215. **Separation of Functions.**

(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 Section 25-43-4.202.

(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 25-43-4.202.

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

1983 presiding officer shall issue a final order.

1984 (2) If the presiding officer is not the agency head, the
1985 presiding officer shall issue an initial order, which becomes a
1986 final order unless reviewed in accordance with Section
1987 25-43-4.217.

1988 (3) A final order or initial order must include, separately
1989 stated:

1990 (a) Findings of fact;
1991 (b) Conclusions of law;
1992 (c) Reasoned application of law to facts; and
1993 (d) Policy reasons for the decision if it is an
1994 exercise of the agency's discretion, for all aspects of the order,
1995 including the remedy prescribed and, if applicable, the action
1996 taken on a motion for stay of effectiveness. Findings of fact, if
1997 set forth in language that is no more than mere repetition or
1998 paraphrase of the relevant provision of law, must be accompanied
1999 by a concise and explicit statement of the underlying facts of
2000 record to support the findings. The order must also include a
2001 statement of the available procedures and time limits for seeking
2002 reconsideration or other administrative relief. An initial order
2003 must include a statement of any circumstances under which the
2004 initial order, without further notice, may become a final order.

2005 (4) Findings of fact must be based on the evidence of record
2006 in the adjudicative proceeding and on matters officially noticed
2007 in that proceeding. Findings may be based upon the kind of
2008 evidence on which reasonably prudent persons are accustomed to
2009 rely in the conduct of their serious affairs and may be based on
2010 such evidence even if it would be inadmissible in a civil trial.
2011 The presiding officer may utilize his experience, technical
2012 competence, and specialized knowledge in evaluating evidence. The
2013 presiding officer should consider the legislative facts and policy
2014 judgments underlying and justifying the rule of law that is
2015 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:

25-43-4.217. Review of Initial Order; Exceptions to Reviewability.

(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 not to 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

2115 the parties or for good cause shown.

2116 (12) The agency head or other presiding officer reviewing
2117 the matter shall serve copies of the final order or order
2118 remanding the matter for further proceedings on each party and, if
2119 issued by other presiding officer, on the agency head.

2120 SECTION 49. The following shall be codified as Section
2121 25-43-4.218, Mississippi Code of 1972:

2122 25-43-4.218. **Stay.**

2123 (1) Except as otherwise provided by law, no action for
2124 enforcement of a final order may be taken until the expiration of
2125 ten (10) days after the later of (a) the issuance of the order or
2126 (b) the issuance of the final disposition of a motion made under
2127 Section 25-43-4.219.

2128 (2) A party may move for a stay of effectiveness of an
2129 initial or final order within ten (10) days after its issuance
2130 unless otherwise provided by statute or stated in the initial or
2131 final order. The agency head or other presiding officer may take
2132 action on the motion for stay, either before or after the
2133 effective date of the initial or final order, and, if the stay is
2134 granted, provide appropriate terms that must be satisfied before
2135 the stay becomes effective.

2136 SECTION 50. The following shall be codified as Section
2137 25-43-4.219, Mississippi Code of 1972:

2138 25-43-4.219. **Alteration; Amendment; Reconsideration.**

2139 Unless otherwise provided by statute or rule:

2140 (a) Any party, within twenty (20) days after issuance
2141 of an initial order or final order, may move for alteration,
2142 amendment, or reconsideration of the order, in whole or in part,
2143 stating the specific grounds upon which relief is requested. The
2144 filing of the motion is not a prerequisite for seeking
2145 administrative or judicial review.

2146 (b) The motion must be disposed of by the same person
2147 or persons who issued the initial order or final order, if

2148 available.

2149 (c) The agency head or presiding officer that issued
2150 the initial order or final order shall issue a written order
2151 denying the motion; granting the motion and altering, amending, or
2152 otherwise modifying the initial order or final order; or granting
2153 the motion and setting the matter for further proceedings. The
2154 motion may be granted, in whole or in part, only if the agency
2155 head or other presiding officer states, in the written order,
2156 findings of fact, conclusions of law, reasoned application of law
2157 to fact, and policy reasons for the decision if it is an exercise
2158 of the agency's discretion, to justify the order. The motion is
2159 deemed to have been denied if the agency head or other presiding
2160 officer does not serve an order disposing of it within twenty (20)
2161 days after the filing of the motion.

2162 SECTION 51. The following shall be codified as Section
2163 25-43-4.220, Mississippi Code of 1972:

2164 25-43-4.220. **Review by Superior Agency.**

2165 If, pursuant to statute, an agency may review the final order
2166 of another agency, the review is deemed to be a continuous
2167 proceeding as if before a single agency. The final order of the
2168 first agency is treated as an initial order, and the second agency
2169 functions as though it were reviewing an initial order in
2170 accordance with Section 25-43-4.217.

2171 SECTION 52. The following shall be codified as Section
2172 25-43-4.221, Mississippi Code of 1972:

2173 25-43-4.221. **Effectiveness of Orders.**

2174 (1) Unless a later date is stated in a final order or a stay
2175 is granted, a final order is effective twenty (20) days after
2176 issuance, but:

2177 (a) A party may not be required to comply with a final
2178 order unless the party has been served with or otherwise has
2179 actual knowledge of the final order;

2180 (b) A nonparty may not be required to comply with a

2181 final order unless the agency has made the final order available
2182 for public inspection and copying or the nonparty has actual
2183 knowledge of the final order.

2184 (2) Unless a later date is stated in an initial order or a
2185 stay is granted, the time when an initial order becomes a final
2186 order in accordance with Section 25-43-4.216 is determined as
2187 follows:

2188 (a) When the initial order is issued, if administrative
2189 review is unavailable;

2190 (b) When the agency head issues an order stating, after
2191 a motion for review has been filed, that review will not be
2192 exercised, if discretion is available to make a determination to
2193 this effect; or

2194 (c) Twenty (20) days after issuance of the initial
2195 order, if:

2196 (i) No party has filed a motion for administrative
2197 review;

2198 (ii) No party has filed a motion to alter, amend
2199 or reconsider the order; and

2200 (iii) The agency head has not given written notice
2201 of its intention to exercise review.

2202 (3) Unless a later date is stated in an initial order or a
2203 stay is granted, an initial order that becomes a final order in
2204 accordance with subsection (2) of this section and Section
2205 25-43-4.216 is effective after becoming a final order, but:

2206 (a) A party may not be required to comply with the
2207 final order unless the party has been served with or has actual
2208 knowledge of the initial order or of an order stating that review
2209 will not be exercised; and

2210 (b) A nonparty may not be required to comply with the
2211 final order unless the agency has made the initial order available
2212 for public inspection and copying or the nonparty has actual
2213 knowledge of the initial order or of an order stating that review

2214 will not be exercised.

2215 (4) This section does not preclude an agency from taking
2216 immediate action to protect the public interest in accordance with
2217 Section 25-43-4.601.

2218 SECTION 53. The following shall be codified as Section
2219 25-43-4.222, Mississippi Code of 1972:

2220 25-43-4.222. **Agency Record.**

2221 (1) An agency shall maintain an official record of each
2222 adjudicative proceeding under this part.

2223 (2) The agency record consists of all matters received by
2224 the agency pertaining to the proceeding, which may include but are
2225 not limited to:

2226 (a) Applications for adjudicative proceedings and
2227 amendments thereto;

2228 (b) Notices of all proceedings;

2229 (c) Any prehearing order;

2230 (d) Any pleadings, motions, requests, and intermediate
2231 rulings;

2232 (e) Evidence received or considered;

2233 (f) A statement of matters officially noticed;

2234 (g) Any public comment received by the agency;

2235 (h) Any comment received by the agency from another
2236 agency, including federal agencies;

2237 (i) Proffers of evidence and objections and rulings
2238 thereon;

2239 (j) Proposed findings and conclusions, requested
2240 orders, and exceptions;

2241 (k) The record prepared for the presiding officer at
2242 the hearing, together with any transcript of all or part of the
2243 hearing considered before final disposition of the proceeding;

2244 (l) Staff memoranda, data or recommendations submitted
2245 to the presiding officer, unless prepared and submitted by
2246 personal assistants and not inconsistent with Section

2247 25-43-4.214(3);

2248 (m) Matters placed on the record after an ex parte
2249 communication;

2250 (n) Any and all other matters filed with the agency by
2251 any person with the apparent purpose of affecting the outcome of
2252 the proceeding; and

2253 (o) Any final order, initial order, or order of
2254 alteration, amendment or reconsideration.

2255 (3) Except to the extent that this chapter or another
2256 statute provides otherwise, the agency record constitutes the
2257 exclusive basis for agency action in adjudicative proceedings
2258 under this part and for judicial review thereof.

2259 (4) Upon appropriate and timely suggestion, the agency may
2260 require or permit subsequent corrections or additions to the
2261 agency record.

2262 (5) Upon request and as may be required by law, on judicial
2263 review, civil enforcement or otherwise, the agency shall prepare
2264 the agency record. The agency has the exclusive responsibility to
2265 prepare and exclusive authority to certify the record or any part
2266 thereof, including but not limited to any transcript of
2267 proceedings, and the agency's certificate shall be accepted by the
2268 court and by any other agency.

2269 (6) Subject to the limitations of this chapter, an agency
2270 may by rule provide the formal process for its preparation and
2271 certification of the agency record.

2272 **PART III**

2273 **DIVISION OF INDEPENDENT HEARING OFFICERS**

2274 SECTION 54. The following shall be codified as Section
2275 25-43-4.301, Mississippi Code of 1972:

2276 25-43-4.301. **Division of Independent Hearing Officers -**
2277 **Creation, Powers, Duties.**

2278 (1) There is created the Division of Independent Hearing
2279 Officers within the Executive Department of the government of the

2280 State of Mississippi, to be headed by a director appointed by the
2281 Governor by and with the consent of the Senate. The director
2282 shall be a lawyer who was licensed to practice law at least five
2283 (5) years prior to appointment and who is an active
2284 member of The Mississippi Bar. The director shall receive an
2285 annual salary set by the Legislature.

2286 (2) The Division of Independent Hearing Officers shall
2287 employ persons as necessary to service the needs of agencies for
2288 hearing officers to conduct adjudicative proceedings as required
2289 by this chapter or other provision of law. The division may
2290 employ persons as full-time employees of the division or as
2291 part-time employees of the division. The division may engage the
2292 services of persons on any other contractual basis. The director
2293 may serve as a hearing officer. The division will ordinarily
2294 provide hearing officers to preside at adjudicative proceedings
2295 only where requested by an agency and where an agency is an
2296 interested party to the proceedings and not merely a neutral
2297 arbiter with no significant stake in the outcome of the
2298 proceedings beyond an interest that the proceedings be promptly,
2299 efficiently, fairly, and justly administered.

2300 (3) The Division of Independent Hearing Officers is
2301 authorized to hire persons with the following qualifications:

2302 (a) Attorneys licensed to practice law for a minimum of
2303 five (5) years;

2304 (b) Certified public accountants with a minimum of five
2305 (5) years of professional experience;

2306 (c) Such other qualified professionals in areas other
2307 than law and accounting as needed by the agencies requiring the
2308 services of hearing officers whose services have been engaged or
2309 contracted for by the Division of Independent Hearing Officers.

2310 (4) The persons whose services are engaged by the division
2311 to preside at adjudicative proceedings shall be known as hearing
2312 officers.

2313 (5) The division may furnish hearing officers to any agency
2314 on a contractual basis and charge the agency reasonable fees for
2315 the services rendered. Any agency receiving the services of
2316 hearing officers provided by the division is authorized to pay the
2317 fees charged by the division.

2318 (6) The division shall have authority:

2319 (a) To further specify qualifications for hearing
2320 officers as the needs of agencies become known, to establish
2321 salaries for the hearing officers, procedures by which applicants
2322 will be considered for employment, and the manner in which public
2323 notice of vacancies in the staff of the division will be given;

2324 (b) To enter into contracts with qualified persons who
2325 will serve as part-time hearing officers on such terms and
2326 conditions as may be appropriate and agreed upon subject to the
2327 provisions of this chapter;

2328 (c) To establish procedures for agencies to request and
2329 for the director to assign hearing officers consistent with this
2330 chapter;

2331 (d) To receive, consider and respond to agency needs
2332 for hearing officers with special education, training and
2333 experience in the area or field in which the agency is charged
2334 with regulatory and administrative responsibilities;

2335 (e) To solicit and receive from agencies
2336 recommendations for individuals who may serve as hearing officers,
2337 part-time hearing officers or contract hearing officers;

2338 (f) From time to time, to survey the agencies and a
2339 representative sampling of persons regulated by the respective
2340 agencies to discover the history, experience, current requirements
2341 and future needs of and for hearing officers in adjudicative
2342 proceedings and, with the cooperation of the agencies, to assess
2343 the professional quality, experience and performance of hearing
2344 officers;

2345 (g) To establish internal procedures that apply only

2346 within the division and adopt forms consistent with this chapter,
2347 the model rules of procedure, and other provision of law, to
2348 govern the hearing officers and to assure their independence in
2349 the performance of their duties;

2350 (h) To establish, implement and enforce policies and
2351 standards for the fair, speedy and cost-effective determination of
2352 each matter requiring an adjudicative proceeding under this
2353 chapter or other provision of law;

2354 (i) To establish standards and procedures for the
2355 evaluation, training, promotion, and discipline of the hearing
2356 officers;

2357 (j) To convene conferences, continuing legal,
2358 regulatory and administrative education programs and training
2359 seminars in the fields of administrative law, public regulation,
2360 and public administration;

2361 (k) To participate in, and expend any funds available
2362 to it, to enable its hearing officers and other employees to
2363 participate in conferences in state and out of state for
2364 continuing legal, regulatory and administrative education and
2365 training, colleges, seminars and other programs;

2366 (l) To maintain a library for use by the division, its
2367 employees, contractors, agencies and the public;

2368 (m) To accept monies, gifts, grants, equipment or
2369 services from any public or private source and use those for any
2370 purpose authorized by this section;

2371 (n) To cooperate with any individual or public agency,
2372 whether state or federal, or with any law school, school of
2373 political science, government, public administration, business or
2374 other similar school, public or private, to improve the quality of
2375 administrative law, public regulation and public administration in
2376 this state;

2377 (o) To maintain records, compile statistics and
2378 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:

25-43-4.401. Informal Adjudicative Hearing - Applicability.

(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:

2412 (a) A matter in which there is no genuine issue of
2413 material fact; or

2414 (b) A matter in which there is a genuine issue of
2415 material fact, if the matter involves only;

2416 (i) A claim for unemployment compensation benefits
2417 within Title 71, Chapter 5, Article 11, Mississippi Code of 1972;

2418 (ii) A disciplinary sanction against a prisoner;

2419 (iii) A disciplinary sanction against a student
2420 which may involve expulsion from an academic institution or
2421 suspension for more than ten (10) days;

2422 (iv) A disciplinary sanction against a public
2423 employee which does not involve discharge from employment or
2424 suspension for more than ten (10) days;

2425 (v) A disciplinary sanction against a licensee
2426 which does not involve revocation, suspension, annulment,
2427 withdrawal, or amendment of a license or does not involve a
2428 potential penalty of more than Five Thousand Dollars (\$5,000);

2429 (vi) Revocation or suspension of a hunting,
2430 fishing, trapping or other similar license issued under Title 49,
2431 Chapter 7, Mississippi Code of 1972; or

2432 (vii) Any other matter that involves an amount in
2433 controversy of not more than Five Thousand Dollars (\$5,000);

2434 (c) A matter in which all of the parties give their
2435 informed consent and agreement that an informal adjudicative
2436 hearing may be used.

2437 (2) The agency may by rule adopt and implement this part.

2438 SECTION 56. The following shall be codified as Section
2439 25-43-4.402, Mississippi Code of 1972:

2440 25-43-4.402. Informal Adjudicative Hearing - Procedures.

2441 The procedures of this chapter pertaining to formal
2442 adjudicative hearings apply to an informal adjudicative hearing,
2443 except to the following extent:

2444 (a) If a matter is initiated as an informal

2445 adjudicative hearing, no prehearing conference may be held.

2446 (b) The provisions of Section 25-43-4.210 do not apply
2447 to informal adjudicative hearings insofar as those provisions
2448 authorize the issuance and enforcement of subpoenas and discovery
2449 orders, but do apply to informal adjudicative hearings insofar as
2450 those provisions authorize the presiding officer to issue
2451 protective orders at the request of any party or upon the
2452 presiding officer's motion.

2453 (c) Sections 25-43-4.212(a), (b) and (c) and
2454 25-43-4.213 do not apply; but:

2455 (i) The presiding officer shall regulate the
2456 course of the proceedings;

2457 (ii) Only the parties may testify and present
2458 exhibits or other evidence except that the presiding officer for
2459 good cause shown may allow others to testify and present exhibits
2460 or other evidence; and

2461 (iii) The parties may comment on the issues.

2462 SECTION 57. The following shall be codified as Section
2463 25-43-4.403, Mississippi Code of 1972:

2464 25-43-4.403. **Informal Adjudicative Hearing - Proposed Proof.**

2465 (1) If the presiding officer has reason to believe that
2466 there are genuine issues of material fact, the presiding officer
2467 may require any party to state the identity of the witnesses or
2468 other sources through whom the party would propose to present
2469 proof if the proceeding were converted to a formal adjudicative
2470 hearing, but the presiding officer shall respect and enforce any
2471 provision of law providing privileges, including the deliberative
2472 process privilege, imposing confidentiality requirements or
2473 protecting privacy rights, trade secrets, and other similar
2474 interests, and may enter protective orders to those ends, except
2475 that the person for whose benefit any such provision of law has
2476 been made may waive that protection. Any party waives any privacy
2477 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:

25-43-4.501. Basic Adjudicative Proceedings - Applicability.

(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);

2511 (d) The denial of an application after the applicant
2512 has abandoned the application;

2513 (e) The denial of an application for admission to an
2514 educational institution or for employment by an agency;

2515 (f) The denial, in whole or in part, of an application
2516 if the applicant has an opportunity for administrative review in
2517 accordance with Section 25-43-4.503;

2518 (g) A matter that may be resolved solely on the basis
2519 of inspection, examinations, or tests;

2520 (h) Any matter having only trivial potential impact
2521 upon the affected parties; or

2522 (i) A matter in which all of the parties have given
2523 their informed consent and agreement that a basic adjudicative
2524 hearing may be used.

2525 (2) An agency may by rule adopt and implement this part.

2526 SECTION 59. The following shall be codified as Section
2527 25-43-4.502, Mississippi Code of 1972:

2528 25-43-4.502. **Basic Adjudicative Proceedings - Procedures.**

2529 (1) The agency head, one or more members of the agency head,
2530 one or more hearing officers or administrative judges employed or
2531 appointed by the agency, or one or more hearing officers assigned
2532 by the Division of Independent Hearing Officers in accordance with
2533 Section 25-43-4.301, or any combination thereof, in the discretion
2534 of the agency head, may be the presiding officer. Unless
2535 prohibited by law, a person exercising authority over the matter
2536 is the presiding officer.

2537 (2) If the proceeding involves a monetary matter or a
2538 reprimand, warning, disciplinary report, or other sanction:

2539 (a) The presiding officer, before taking action, shall
2540 give each party an opportunity to be informed of the agency's view
2541 of the matter and to explain the party's view of the matter; and

2542 (b) The presiding officer, at the time any unfavorable
2543 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

2577 pendency of administrative review to any person who did not
2578 request the review, but the agency may not take any action on
2579 review less favorable to any party than the original order without
2580 giving that party notice and an opportunity to explain that
2581 party's view of the matter.

2582 (b) The reviewing officer, in the discretion of the
2583 agency head, may be any person who could have presided at the
2584 basic adjudicative proceeding, but the reviewing officer must be
2585 one who is authorized to grant appropriate relief upon review.

2586 (c) The reviewing officer shall give each party an
2587 opportunity to explain the party's view of the matter unless the
2588 party's view is apparent from the written materials in the file
2589 submitted to the reviewing officer. The reviewing officer shall
2590 make any inquiries necessary to ascertain whether the proceeding
2591 must be converted to an informal adjudicative hearing or a formal
2592 adjudicative hearing.

2593 (d) The reviewing officer may issue an order disposing
2594 of the proceeding in any manner that was available to the
2595 presiding officer at the basic adjudicative proceeding, or the
2596 reviewing officer may remand the matter for further proceedings,
2597 with or without conversion to an informal adjudicative hearing or
2598 a formal adjudicative hearing.

2599 (e) The order on review must be in writing, including a
2600 brief statement of reasons for the decision, and a notice of any
2601 further available administrative review.

2602 (f) A request for administrative review is deemed to
2603 have been denied if the reviewing officer does not dispose of the
2604 matter or remand it for further proceedings within twenty (20)
2605 days after the request is submitted.

2606 SECTION 62. The following shall be codified as Section
2607 25-43-4.505, Mississippi Code of 1972:

2608 25-43-4.505. **Agency Record of Basic Adjudicative Proceedings**
2609 **and Administrative Review.**

(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:

25-43-4.601. Emergency Adjudicative Proceedings.

(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,

2709 in addition or in the alternative, may seek an extraordinary writ.

2710 (6) Upon the motion of a party, or upon the court's own
2711 motion, acting sua sponte, a proceeding for judicial review of
2712 agency action may be converted to an application for an
2713 extraordinary writ, and, conversely, an application for an
2714 extraordinary writ may be converted to a proceeding for judicial
2715 review. In the event of conversion, the converted action shall
2716 relate back to the time of the original action.

2717 (7) Declaratory opinions issued pursuant to Section
2718 25-43-2.103 are not subject to judicial review.

2719 (8) "Party to judicial review or civil enforcement
2720 proceedings," or "party" in contexts so indicating, means:

2721 (a) A person who files a notice of judicial review or a
2722 complaint for civil enforcement;

2723 (b) A person named as a party in a proceeding for
2724 judicial review or civil enforcement or allowed to participate as
2725 a party in the proceeding; and

2726 (c) The agency in a proceeding for judicial review or
2727 civil enforcement.

2728 SECTION 65. The following shall be codified as Section
2729 25-43-5.102, Mississippi Code of 1972:

2730 25-43-5.102. **Final Agency Action Reviewable.**

2731 A person who qualifies under this chapter regarding (a)
2732 standing (Section 25-43-5.106), (b) exhaustion of administrative
2733 remedies (Section 25-43-5.107), and (c) time for filing the notice
2734 of judicial review (Section 25-43-5.108), and other applicable
2735 provisions of law regarding bond, compliance, and other
2736 preconditions, is entitled to judicial review of final agency
2737 action, whether or not the person has sought judicial review of
2738 any related nonfinal agency action.

2739 SECTION 66. The following shall be codified as Section
2740 25-43-5.103, Mississippi Code of 1972:

2741 25-43-5.103. **Nonfinal Agency Action Reviewable.**

2742 Except as provided in Sections 25-43-5.101(3), (4), (5) and
2743 (6), a person is entitled to judicial review of nonfinal agency
2744 action only if:

2745 (a) It appears likely that the person will qualify
2746 under Section 25-43-5.102 for judicial review of the related final
2747 agency action;

2748 (b) The person has applied to the agency for an order
2749 for judicial review of nonfinal agency action and the agency has
2750 granted or denied the application, provided that the agency
2751 ordinarily should give its reasons for granting or denying the
2752 application; and

2753 (c) The criteria of the Mississippi Rules of Appellate
2754 Procedure respecting interlocutory appeals or of the Mississippi
2755 Rules of Civil Procedure respecting a judgment upon multiple
2756 claims or involving multiple parties are satisfied.

2757 SECTION 67. The following shall be codified as Section
2758 25-43-5.104, Mississippi Code of 1972:

2759 25-43-5.104. Jurisdiction.

2760 (1) The Mississippi Court of Appeals has authority to
2761 conduct judicial review except as provided:

2762 (a) In Title 77, in the case of judicial review of
2763 agency action of the Mississippi Public Service Commission;

2764 (b) In Sections 71-5-529, 71-5-531, 71-5-533 in the
2765 case of judicial review of agency action of the Mississippi
2766 Employment Security Commission; and

2767 (c) In Sections 25-43-5.101(3), (4), (5) and (6).

2768 (2) If evidence is to be adduced in the court in accordance
2769 with Section 25-43-5.114(1), the court may remand the matter:

2770 (a) To the agency with appropriate directions; or

2771 (b) If the court determines in its sound discretion
2772 that the nature of one or more issues upon which new evidence may
2773 be taken is such that remand to the agency would be inappropriate,
2774 to a master as provided by the Mississippi Rules of Civil

2775 Procedure, provided that, in addition to the provisions of the
2776 Mississippi Rules of Civil Procedure:

2777 (i) Any person eligible for appointment as a
2778 special judge under Section 9-1-105(6) is eligible for appointment
2779 as a master; or

2780 (ii) The Division of Independent Hearing Officers
2781 may supply a person who becomes eligible for appointment as a
2782 master.

2783 (3) Except as provided otherwise by this chapter or other
2784 statute, an agency retains jurisdiction as may be appropriate,
2785 convenient and otherwise necessary pending judicial review.

2786 SECTION 68. The following shall be codified as Section
2787 25-43-5.105, Mississippi Code of 1972:

2788 25-43-5.105. **Notice of Judicial Review; Relief Available.**

2789 (1) Except as provided in Title 77, and in Sections
2790 71-5-529, 71-5-531, and 71-5-533, judicial review is initiated by
2791 filing a notice of judicial review in the Court of Appeals.
2792 Failure of a party initiating a proceeding for judicial review to
2793 take any step other than the timely filing of a notice of judicial
2794 review does not affect the perfection of the proceeding for
2795 judicial review, but is grounds only for such action as the court
2796 deems appropriate, which may include dismissal of the proceeding
2797 for judicial review.

2798 (2) A party initiating a proceeding for judicial review may
2799 seek any type of relief available under Section 25-43-5.101(3),
2800 (4), (5) or (6) or 25-43-5.117 or other law.

2801 SECTION 69. The following shall be codified as Section
2802 25-43-5.106, Mississippi Code of 1972:

2803 25-43-5.106. **Standing.**

2804 (1) The following persons have standing to obtain judicial
2805 review of final or nonfinal agency action:

2806 (a) A person to whom the agency action is specifically
2807 directed;

2808 (b) A person who was a party to the agency proceedings
2809 that led to the agency action;

2810 (c) If the agency action, review of which is sought, is
2811 a rule, a person subject to that rule or an association some of
2812 whose members are subject to that rule;

2813 (d) A person eligible for standing under another
2814 provision of law; or

2815 (e) A person otherwise aggrieved or adversely affected
2816 by the agency action or an association one or more of whose
2817 members are aggrieved or adversely affected by the agency action.

2818 For purposes of this paragraph, no person has standing as one
2819 otherwise aggrieved or adversely affected unless:

2820 (i) The agency action has arguably affected or is
2821 arguably likely to affect that person;

2822 (ii) That person's asserted interests are arguably
2823 among those that the agency was required to consider when it
2824 engaged in the agency action review of which is sought; and

2825 (iii) A judgment in favor of that person may
2826 substantially eliminate or redress the arguable effect to or upon
2827 that person caused or arguably likely to be caused by the agency
2828 action.

2829 (2) A claim that the decision in a proceeding for judicial
2830 review may be given precedential effect that may affect a person
2831 is, without more, insufficient grounds upon which the court may
2832 find that the person has standing. Even though he may lack
2833 standing, the person may apply for leave to file a brief as amicus
2834 curiae under the Mississippi Rules of Appellate Procedure.

2835 (3) A claim (1) that he is a citizen, a voter or a taxpayer
2836 or (2) that he has an interest that the law be enforced is,
2837 without more, insufficient grounds upon which the court may find
2838 that a person has standing.

2839 SECTION 70. The following shall be codified as Section
2840 25-43-5.107, Mississippi Code of 1972:

2841 25-43-5.107. **Exhaustion of Administrative Remedies.**

2842 A person may file a notice of judicial review under this
2843 chapter only after exhausting all administrative remedies
2844 available within the agency review of whose action is being sought
2845 and within any other agency authorized to exercise administrative
2846 review, but:

2847 (a) A person seeking judicial review of a rule need not
2848 have participated in the rule-making proceeding upon which that
2849 rule is based, or have moved for its amendment or repeal;

2850 (b) A person seeking judicial review need not exhaust
2851 administrative remedies to the extent that this chapter or any
2852 other law provides that exhaustion is not required; or

2853 (c) The court may relieve a person seeking judicial
2854 review of the requirement to exhaust any or all administrative
2855 remedies, to the extent that the administrative remedies are
2856 inadequate, or requiring their exhaustion would result in
2857 irreparable harm disproportionate to the public benefit derived
2858 from requiring exhaustion.

2859 SECTION 71. The following shall be codified as Section
2860 25-43-5.108, Mississippi Code of 1972:

2861 25-43-5.108. **Time for Filing Notice of Judicial Review.**

2862 Subject to other requirements of this chapter or of any other
2863 law:

2864 (a) A notice of judicial review of a rule may be filed
2865 at any time, except as limited by Section 25-43-3.113(2).

2866 (b) A notice of judicial review of an order is not
2867 timely unless filed within thirty (30) days after issuance of the
2868 written order by a person authorized to act for the agency.

2869 (c) The time for filing notice of judicial review is
2870 extended during the pendency of the person's timely attempts to
2871 exhaust administrative remedies.

2872 SECTION 72. The following shall be codified as Section
2873 25-43-5.109, Mississippi Code of 1972:

25-43-5.109. **Notice of Judicial Review - Filing and Contents.**

(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:

25-43-5.110. **Notice of Judicial Review - Service and Notification.**

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 agency 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:

25-43-5.112. Limitation on New Issues.

(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

2973 25-43-5.114, Mississippi Code of 1972:

2974 25-43-5.114. **New Evidence Taken by Court or Agency Before**
2975 **Final Disposition.**

2976 (1) The court, in its discretion assisted by the agency or
2977 by a master as provided in Section 25-43-5.104(2), may receive
2978 evidence, in addition to that contained in the agency record for
2979 judicial review, only if it relates to the validity of the agency
2980 action at the time it was taken and is needed to decide disputed
2981 issues regarding:

2982 (a) Improper constitution as a decision-making body, or
2983 improper motive or behavior on grounds for disqualification, of
2984 those taking the agency action;

2985 (b) The apparent reliance by the agency taking the
2986 agency action on facts or evidence not included in the record;

2987 (c) Unlawfulness of procedure or of decision-making
2988 process;

2989 (d) A failure by the agency to explain its action where
2990 such failure may frustrate judicial review;

2991 (e) The explanation of technical terms or complex
2992 subjects;

2993 (f) The apparent failure of the agency to consider
2994 adequately some reasonable alternative to the agency action; or

2995 (g) Any material fact that was not required by any
2996 provision of law to be determined exclusively on an agency record
2997 of a type reasonably suitable for judicial review.

2998 (2) The court may remand a matter to the agency or a master,
2999 before final disposition of a proceeding for judicial review, with
3000 directions that the agency conduct fact-finding and other
3001 proceedings the court considers necessary, within such time limits
3002 as the court may prescribe, and that the agency or a master take
3003 such further action on the basis thereof as the court directs, if:

3004 (a) The agency was required by this chapter or any
3005 other provision of law to base its action on a record of a type

3006 reasonably suitable for judicial review, but the agency failed to
3007 prepare or preserve an adequate record;

3008 (b) The court finds that (i) new evidence has become
3009 available that relates to the validity of the agency action at the
3010 time it was taken, that one or more of the parties did not know
3011 and was under no duty to discover, or did not know and was under a
3012 duty to discover but could not reasonably have discovered, until
3013 after the agency action, and (ii) the interests of justice would
3014 be served by remand to the agency;

3015 (c) The agency improperly excluded or omitted evidence
3016 from the record; or

3017 (d) A relevant provision of law changed after the
3018 agency action and the court determines that the new provision may
3019 control the outcome.

3020 (3) The court may take judicial notice of adjudicative facts
3021 consistent with the Mississippi Rules of Evidence and Section
3022 25-43-4.213(g).

3023 SECTION 78. The following shall be codified as Section
3024 25-43-5.115, Mississippi Code of 1972:

3025 25-43-5.115. **Agency Record for Judicial Review - Contents,**
3026 **Preparation, Transmittal, Cost.**

3027 (1) In the event of judicial review of agency action, the
3028 agency shall have full and exclusive authority and responsibility
3029 of preparing the agency record and certifying the agency record to
3030 the court. Subject only to the limitations of this part, an
3031 agency may by rule provide the formal process for its preparation
3032 and certification of the agency record.

3033 (2) Within thirty (30) days after service of notice of
3034 judicial review, or within further time allowed by the court or by
3035 other provision of law, the agency shall transmit to the clerk of
3036 the Court of Appeals the agency record certified by the agency for
3037 judicial review of the agency action, consisting of any agency
3038 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:

25-43-5.116. **Scope of Review; Grounds for Invalidity.**

(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:

25-43-5.118. Decisions of Court of Appeals Reviewable by Writ of Certiorari.

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

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.

(1) 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.

(2) 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:

25-43-5.204. Rules of Practice, Procedure and Evidence; Incorporation of Certain Provisions on Judicial Review.

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

3336 opportunity to present their views and review adverse rulings, are
3337 repealed.

3338 SECTION 89. Sections 37-45-39, 37-45-59 and 37-45-61,
3339 Mississippi Code of 1972, which provide for the preservation of
3340 the reporter's notes, transcription and preparation of the record
3341 for appeal, and further appeal to the Supreme Court in certain
3342 hearings held before the State Department of Education, are
3343 repealed.

3344 SECTION 90. Section 41-51-27, Mississippi Code of 1972,
3345 which deals with the record in hearings held under the Animal and
3346 Poultry By-Products Disposal Law of 1964, is repealed.

3347 SECTION 91. Sections 49-27-43, 49-27-45 and 49-27-47,
3348 Mississippi Code of 1972, which deal with appeal to the chancery
3349 court under the provisions of the Coastal Protection Wetlands Act,
3350 are repealed.

3351 SECTION 92. Section 53-1-45, Mississippi Code of 1972, which
3352 deals with appeals to the Supreme Court in the matter of a hearing
3353 held before the State Oil and Gas Board, is repealed.

3354 SECTION 93. Sections 63-17-91 and 63-17-93, Mississippi Code
3355 of 1972, which deal with hearings held under the Mississippi Motor
3356 Vehicle Commission Law, are repealed.

3357 SECTION 94. Section 65-2-17, Mississippi Code of 1972, which
3358 deals with the appeal to the Supreme Court from a decision of the
3359 circuit court in an appeal from a hearing held by the state
3360 highway arbitration board, is repealed.

3361 SECTION 95. Section 83-53-35, Mississippi Code of 1972,
3362 which prescribes the issuance of an order following a hearing
3363 before the Commissioner of Insurance concerning credit life and
3364 credit disability insurance, is repealed.

3365 SECTION 96. Every agency as defined in this act shall, no
3366 later than July 1, 2002, file with the Secretary of the Senate and
3367 the Clerk of the House a report which outlines any conflicts
3368 between this act and any other laws affecting the agency. This

3369 report shall include proposed legislation to bring the other laws
3370 into conformity with the requirements of this act. The Secretary
3371 of State shall, no later than July 1, 2000, file with the
3372 Secretary of the Senate and the Clerk of the House a list of
3373 sections which the Secretary of State believes conflict with this
3374 act. The Secretary of the Senate and the Clerk of the House shall
3375 maintain a list of agencies which have complied with this section.

3376 SECTION 97. Section 96 of this act shall take effect and be
3377 in force from and after its passage. The remainder of this act
3378 shall take effect and be in force from and after July 1, 2003.