

STATE OF MISSISSIPPI DEPARTMENT OF EDUCATION	TOPIC: ADMINISTRATIVE PROCEDURES ACT
EMPLOYEE PROCEDURES MANUAL	SECTION: 22.0 PAGE 1 OF 4 EFFECTIVE DATE: MAY 1, 2000 REVISION #2: JULY 1, 2011

This is the MDE process implementing the Administrative Procedures Act (APA) process as required in §§ 25-43-1 through 25-43-19 of the Mississippi Code. This statute requires the MDE to provide an opportunity for proposed agency rules or changes in them to be reviewed by those who may be impacted by the rule or change and to have an opportunity to comment on it.

As defined in 25-43-1.102(i) "Rule" means the whole or a part of an agency regulation or other statement of general applicability that implements, interprets or prescribes:

- Law or policy, or
- 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:
  - 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;
  - 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;
  - A regulation or statement that only establishes specific prices to be charged for particular goods or services sold by an agency;
  - A regulation or statement concerning only the physical servicing, maintenance or care of agency owned or operated facilities or property;
  - 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;
  - A regulation or statement directly related only to 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;

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- A form whose contents or substantive requirements are prescribed by rule or statute, and instructions for the execution or use of the form;
- An agency budget;
- A compact or agreement between an agency of this state and one or more agencies of another state or states; or
- An opinion of the Attorney General pursuant to § 7-5-25, an opinion of the Ethics Commission pursuant to § 25-4-17, or an Executive Order of the Governor.

The APA process has the following general requirements:

- potentially affected individuals/groups must have at least 30 days notice of intended action, in order to make comments before the action becomes final,
- notice must be filed in Secretary of State's office after MBE approval,
- proposed change must be mailed to all individuals who have requested notice of proposed rule,
- notice of rule must be filed in Secretary of State's office after final Mississippi Board of Education (MBE) approval, and
- rules are effective 30 days after filing unless otherwise noted and special circumstances exist.

For a complete listing of the ARA rules and formatting guidelines adopted by the Secretary of State, please refer to <http://www.sos.ms.gov>.

In the event that it is determined that a new, amended, repealed or suspended regulation/procedure/policy being recommended for approval to the MBE must go through the APA process, the steps outlined below should be followed:

1. The item should be preceded by the statement: "Approval to begin the Administrative Procedures Act process: To ...."
2. Once the item is approved by the MBE, in order to begin the APA process, the originating office should complete the APA Filing Notice (<http://www.mde.k12.ms.us>) along with a Memorandum to all stakeholders advising of the policy change and the opportunity to submit public comment. This form should be signed by the bureau director with blue ink,

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should be provided to the MDE Legal Department along with the Notice and Proposed policy. Board backup material should not be attached.

3. The APA filing must also be provided electronically by the originating office to the Office of the Secretary of State and the MDE Legal Department. One electronic text file must be provided in Microsoft Word, plain text, or any other word processing text file readily convertible by Microsoft Word into a Microsoft Word document to [adminrules@sos.ms.gov](mailto:adminrules@sos.ms.gov). Email copies of both the rule and filing cover page. ***If the document is more than 10 pages DO NOT EMAIL, but place on a disc for delivery when filed.***
4. The Legal Department will review and file the documents with the Secretary of State's Office. A copy of the signed and stamped "Filed" APA Filing Notice form verifying the filing will be provided to the originating office.
5. Within three (3) days after its proper filing with the Secretary of State, the originating office shall provide a copy of the notice of proposed rule adoption to each person who has made a timely request to the MDE to receive notices of rule adoptions. The originating office should also provide an announcement of this MBE action to the Office of Management Information Systems. To ensure an opportunity for district personnel to comment on the proposed regulation/procedure/policy, the originating office should provide copies to school district superintendents.
6. The documents must be on file for 25 days from the filing of the Proposed Action on Rules. In some cases, this will mean that no action can be taken at the next MBE meeting.
7. When 25 days have elapsed and the item is being prepared for the MBE Agenda, the originating office should recommend approval of the rule. The originating office should indicate that the rule has completed the APA 25 day period with or without comments and indicate whether any changes in the proposed action have been made. Any comments should be a part of the backup materials. The item should appear on the regular agenda, not the consent agenda.
8. After the MBE has reviewed all comments and approved the rule, the originating office should immediately complete the APA Filing Notice Form (SOS APA Form 001 – Final Action on Rules section). This form should be signed by the bureau director with blue ink and two (2) copies of the notice and the proposed rule should be provided to the MDE Legal Department. Board backup material should not be attached. The Legal Department will file these documents with the Secretary of State. A copy of the signed, stamped "Filed" filing notice will be provided to the originating office.

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9. The FINAL APA filing must also be provided electronically by the originating office to the Office of the Secretary of State and the MDE Legal Department. One electronic text file must be provided in Microsoft Word, plain text, or any other word processing text file readily convertible by Microsoft Word into a Microsoft Word document to [adminrules@sos.ms.gov](mailto:adminrules@sos.ms.gov). Email copies of both the rule and filing cover page. ***If the document is more than 10 pages DO NOT EMAIL, but place on a disc for delivery when filed.***
10. The effective date of the rule will be 30 days from the date of the final action by the MBE unless otherwise noted and special circumstances exist. Program offices are responsible for maintaining Mississippi Board of Education (MBE) policies for their office. At least annually, all offices should review their MBE policies to determine that the online versions of the policies are accurate and that all links are functioning appropriately.