

STATE OF MISSISSIPPI DEPARTMENT OF EDUCATION	TOPIC: ADMINISTRATIVE PROCEDURES ACT
EMPLOYEE PROCEDURES MANUAL	<u>SECTION: 22.0</u> <u>PAGE 1 OF 4</u> <u>EFFECTIVE DATE:</u> <u>MAY 1, 2000</u> <u>REVISION #3:</u> <u>OCT. 1, 2023</u>

This is the MDE process implementing the Administrative Procedures Act (APA) process as required in Miss. Code Ann. §§ 25-43-1 through 25-43-19. 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 Miss. Code Ann. § 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, to make comments before the action becomes final,
- notice to begin the APA process must be filed in Secretary of State's office after SBE 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 SBE approval, and
- rules are effective 30 days after filing unless otherwise noted and special circumstances exist.

For a complete listing of the APA rules and formatting guidelines adopted by the Secretary of State, please refer to <https://www.sos.ms.gov/regulation-enforcement/administrative-procedures>. The rules provide guidance on what documents are required to be sent with filings that include new items, revised items, temporary items, and repealed items. The Code section of the website also provides a listing of all the Title 7 Part Numbers that are in effect for the MDE. If a Part exists for the item that is being revised, the revision should be to the existing Part number. If a Part does not exist for an item that is needing to be established, please check with the Office of Educational Accountability for the next available Part number for the agency. It is the responsibility of the program office to periodically check determine if any parts should be revised and/or repealed.

If it is determined that a new, amended, repealed, or suspended regulation/ procedure/policy being recommended for approval to the SBE must go through the APA process, the steps outlined below should be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

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1. The Board item shall be preceded by the statement: “Approval to begin the Administrative Procedures Act process: To”
2. Once the item is approved by the SBE, to begin the APA process, the originating program office shall complete the APA Filing Notice along with the required documents outlined in the APA Rules and Regulations.
3. The APA filing shall be emailed to adminrules@sos.ms.gov. Generally, the filing includes both a Word document and a pdf of the form and the item that is being submitted.
4. The Secretary of State’s office will send a copy of the signed and stamped “Filed” APA Filing Notice form verifying the filing will be sent back to the email that submitted the filing. The item should then be reviewed on the Bulletin at the Secretary of State’s website.
5. Upon the item being filed with the Secretary of State’s office, the originating office shall submit a ticket to mde.net to post the item on the APA Notifications section of the MDE Home Page. It shall also be sent to the Office of Communications to be included in the EdUpdate.
6. The documents must be on file for 25 days from the filing on the Bulletin. In some cases, this will mean that no action can be taken at the next SBE meeting.
7. The Board item shall be prepared by the originating program office to be placed on the e SBE Agenda for final approval. The originating program office should indicate that the rule has completed the APA process 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 of the Board item.
8. After the SBE has reviewed all comments and approved the rule, the originating office shall immediately complete both a Word document and a pdf of the form and the item and submit the final filing to the Secretary of State’s office. Board backup material should not be attached. The Secretary of State’s office will send a copy of the signed and stamped “Filed” APA Filing Notice form verifying the filing will be sent back to the email that submitted the filing. The item should then be reviewed on the Bulletin at the Secretary of State’s website.
9. The effective date of the rule will be 30 days from the date filed with the Secretary of State’s office unless otherwise noted and special circumstances exist. The Office of

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Educational Accountability is responsible for posting State Board Policy revisions to the State Board of Education's website. All other items shall be posted as deemed appropriate by their respective Chief.