

Subpart 2-Administrative Rules
Chapter 03-Procedure For Issuing Declaratory Opinion

Scope of Rules

100 This chapter sets forth the Department of Agriculture and Commerce's, hereinafter "Department," rules governing the form and content of requests for declaratory opinions, and the Department's procedures regarding the requests, as required by Mississippi Code Ann. § 25-43-2.103. These rules are intended to supplement and be read in conjunction with the provisions of the Mississippi Administrative Procedures Law, which may contain additional information regarding the issuance of declaratory opinions. In the event of any conflict between these rules and the Mississippi Administrative Procedures Law, the latter shall govern.

(Adopted June 21, 2005.)

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

Persons Who May Request Declaratory Opinions

101 Any person with a substantial interest in the subject matter may request a declaratory opinion from the Department by following the specified procedures. "Substantial interest in the subject matter" means: an individual, business, group or other entity that is directly affected by the Department's administration of the laws within its primary jurisdiction. "Primary jurisdiction of the Department" means the Department has a constitutional or statutory grant of authority in the subject matter at issue.

(Adopted June 21, 2005.)

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

Subjects That May Be Addressed In Declaratory Opinions

102 The Department will issue declaratory opinions regarding the applicability to specified facts of: (1) a statute administered or enforceable by the Department or (2) a rule promulgated by the Department. The Department will not issue a declaratory opinion regarding a statute or rule that is outside the primary jurisdiction of the Department.

(Adopted June 21, 2005.)

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

Circumstances In Which Declaratory Opinions Will Not Be Issued

- 103 The Department may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:
1. lack of clarity concerning the question presented;
 2. there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
 3. the statute or rule on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
 4. the facts presented in the request are not sufficient to answer the question presented;
 5. the request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
 6. the request seeks to resolve issues that have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the statute or rule on which a declaratory opinion is sought;
 7. no controversy exists concerning the issue, as the requestor is not faced with existing facts or those certain to arise that raise a question concerning the application of the statute or rule;
 8. the question presented by the request concerns the legal validity of a statute or rule;
 9. the request is not based upon facts calculated to aid in the planning of future conduct but is, instead, based on past conduct in an effort to establish the effect of that conduct;
 10. no clear answer is determinable;
 11. the question presented by the request involves the application of a criminal statute or a set of facts that may constitute a crime;
 12. the answer to the question presented would require the disclosure of information that is privileged or otherwise protected by law from disclosure;
 13. the question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's opinion;
 14. a similar request is pending before this Department or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law.
 15. where issuance of a declaratory opinion may adversely affect the interests of the State, the Department or any of their officers or employees in any litigation, which is pending or may reasonably be expected to arise;
 16. the question involves eligibility for a license, permit, certificate or other approval by the Department or some other agency, and there is a statutory or regulatory application process by which eligibility for said license, permit, certificate or other approval would be determined.

(Adopted June 21, 2005.)

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

Written Request Required

104 Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the Department.

(Adopted June 21, 2005.)

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

Where to Send Requests

105 All requests must be mailed, delivered or transmitted via facsimile to the Department. The request shall clearly state that it is a request for a declaratory opinion. Oral and telephone requests and email requests will not be accepted for official opinions.

(Adopted June 21, 2005.)

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

Name, Address and Signature of Requestor

106 Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any other administrative or judicial tribunal.

(Adopted June 21, 2005.)

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

Question Presented

107 Each request shall contain the following:

1. a clear and concise statement of all facts on which the opinion is requested;
2. a citation to the statute or rule at issue;
3. the question(s) sought to be answered in the opinion, stated clearly;
4. a suggested proposed opinion from the requestor, stating the answers desired by petitioner and a summary of the reasons in support of those answers;
5. the identity of all other known persons involved in or impacted by the described factual situation, including their relationship to the facts, name, mailing address and telephone number; and
6. a statement to show that the person seeking the opinion has a substantial interest in the subject matter.

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

Time For Department's Response

- 108 Within forty-five (45) days after the receipt of a request for a declaratory opinion that complies with the requirements of these rules, the Department shall, in writing:
1. issue a declaratory opinion regarding the specified statute or rule as applied to the specified circumstances;
 2. decline to issue a declaratory opinion, stating the reasons for its action; or
 3. agree to issue a declaratory opinion by a specified time but not later than ninety (90) days after receipt of the written request.

(Adopted June 21, 2005.)

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

- 109 The forty-five (45) day period shall begin running on the first State of Mississippi business day on or after the request is received by the Department, whichever is sooner.

(Adopted June 21, 2005.)

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

Opinion Not Final for Sixty Days

- 110 A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Department may, in its discretion, withdraw or amend the declaratory opinion for any reason that is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

(Adopted June 21, 2005.)

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

Notice by Department to Third Parties

- 111 The Department may give notice to any person, agency or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from other persons, agencies or other entities other than the requestor.

(Adopted June 21, 2005.)

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

Public Availability of Requests and Declaratory Opinions

112 Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Department's public records request procedure. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests that contain information that is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

(Adopted June 21, 2005.)

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

Effect of a Declaratory Opinion

113 The Department will not pursue any civil or criminal or administrative action against a person who is issued a declaratory opinion from the Department and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. Any declaratory opinion rendered by the Department shall be binding only on the Department and the person to whom the opinion is issued. No declaratory opinion will be used as precedent for any other transaction or occurrence beyond that set forth by the requesting person.

(Adopted June 21, 2005.)

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