

Chapter 5. Agency Rules and Regulations

In this chapter, you will learn:

- How are rules made?
- What is rulemaking?
- What is formal rulemaking?
- How do citizens participate in rulemaking?
- What information is in the Federal Register?
- What are the three major rules?
- What is a proposed rule?
- What is a final rule?

Differences between Rules and Decisions

Rule

Implements laws

Directed toward future

Applicable to large group

An agency legislative function

Decision

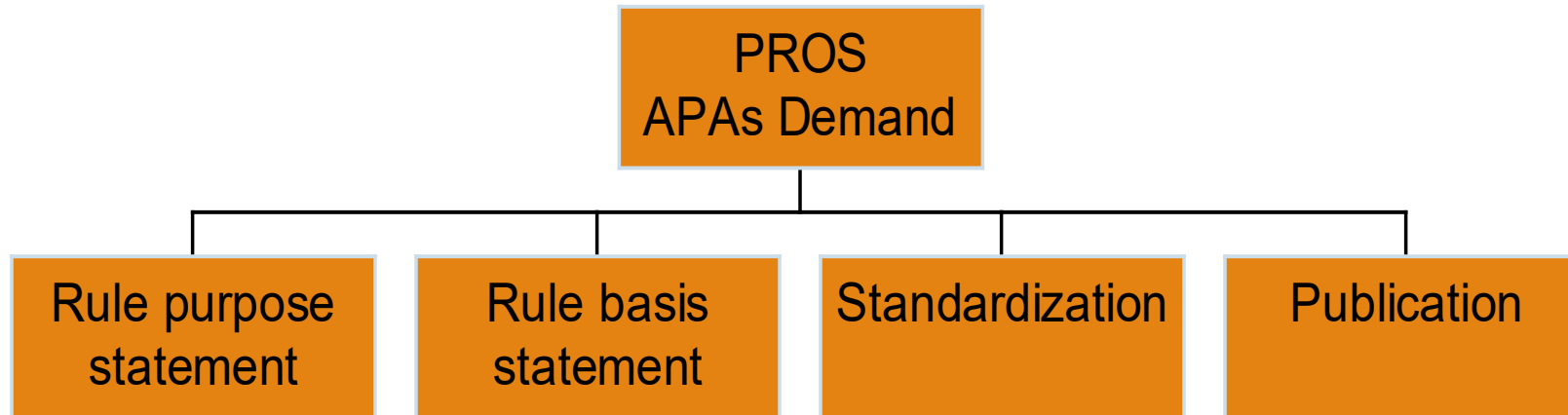
Solves conflicts

Resolves past problem

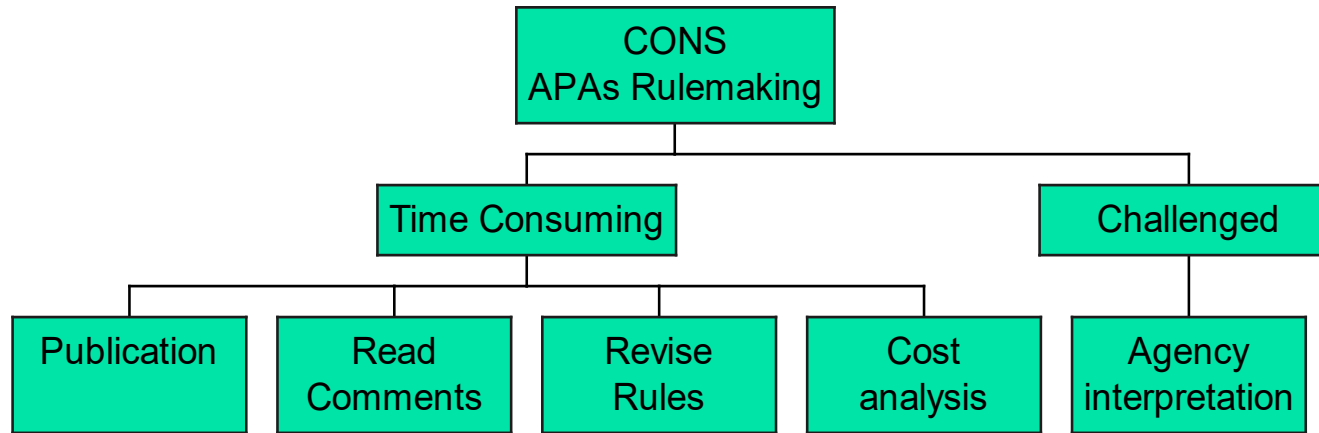
Applicable to specific persons

An agency judicial function

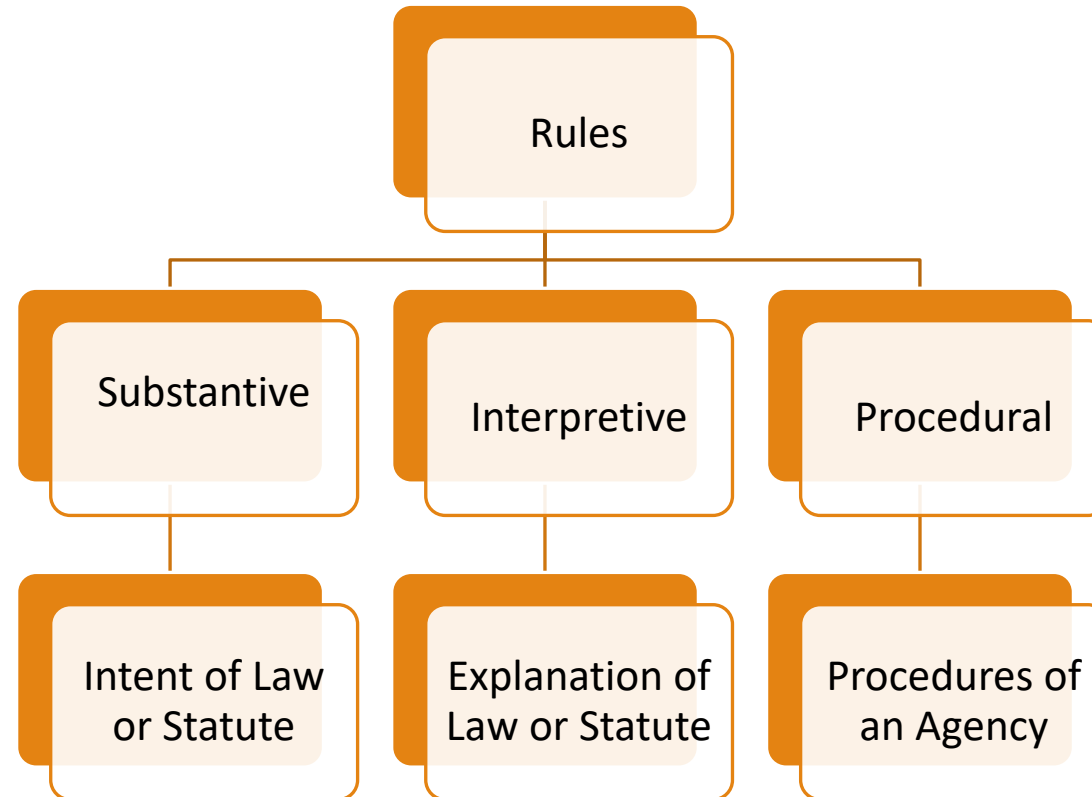
Pros of Administrative Procedure Acts



Cons of Administrative Procedure Acts



Primary Types of Rules



Rulemaking Procedures

Informal

An informal hearing/no hearing

Notice of proposed rule

Comments of interested participants

Statement of basis and purpose of rule

Publication of final rule

Formal

Trial-type hearing

Notice of proposed rule

Evidence, arguments, cross-examinations

Statement of findings and conclusions on each issue of rule presented at hearing

Publication of final rule

Informal Rule Making: Notice and Comment

Minimal Requirements

Notice to public of proposed rule

Opportunity for public to comment

Publication of the final rule *which takes into consideration the public comments.*

No requirement for public **hearing** just comment

→ Where does proposed rule come from?

Mississippi Administrative Procedures Law: Publication

25-43-2.102 (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..

Mississippi Administrative Procedures Law: Publication

25-43-2.102 (2) 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.

Mississippi Administrative Procedures Law: Publication

25-43-2.102 (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.

Notice to Public of Proposed Rule

Federal Register - government publication that keeps the public informed of government activities including:

Proposed rules

Final rules

→ Published daily

→ Final rules effective 30 days after published in Register.

Contrast with *Code of Federal Regulations*

Formal Rule Making

Rare: generally

- Directed by enabling act
- Directed by another statute
- Result of Supreme Court decision
- Critical language “after hearing for the record” not “after hearing.”

Same procedure as Informal except for hearing for the record.

Hearing for the Record

Proposed rule AND hearing date published

Conducted by a hearing officer

Similar to trial

- Opening statements
- Testimony with Cross-examination
- Proposed findings and conclusions
- Hearing officers makes findings, conclusions and reasons for implementing the rule.

Other Forms of Rule Making

Hybrid - informal with limited hearings

Exempted - when agency determines

- Impracticable
- Unnecessary
- Contrary to public interest

Negotiated - Agency and affected parties negotiate a rule that is acceptable to everyone affected. Committee of industry and public interest groups.

Mississippi Administrative Procedures Law – Required Rule Making

§ 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.

Mississippi Administrative Procedures Law – Model Rules of Procedure

§ 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.

Mississippi Administrative Procedures Law – Public Rule Making Docket

§ 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.

Mississippi Administrative Procedures Law – Public Rule Making Docket

§ 25-43-3.102. Public rule-making docket.

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

Mississippi Administrative Procedures Law – Notice of Proposed Rule Adoption

§ 25-43-3.103. Notice of proposed rule adoption.

(1) At least twenty-five (25) days before the adoption of a rule an agency shall cause notice of its contemplated action to be properly filed with the Secretary of State for publication in the administrative bulletin.

Mississippi Administrative Procedures Law – Notice of Proposed Rule Adoption

§ 25-43-3.103. Notice of proposed rule adoption.

The notice of proposed rule adoption must include:

- (a) A short explanation of the purpose of the proposed rule and the agency's reasons for proposing the rule;
- (b) The specific legal authority authorizing the promulgation of rules;
- (c) A reference to all rules repealed, amended or suspended by the proposed rule;
- (d) Subject to Section 25-43-2.101(5), the text of the proposed rule;
- (e) Where, when and how persons may present their views on the proposed rule; and
- (f) Where, when and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Mississippi Administrative Procedures Law – Public Participation

§ 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 ten (10) persons. At that proceeding, persons may present oral or written argument, data and views on the proposed rule

Mississippi Administrative Procedures Law – Invalidity of Rules

§ 25-43-3.111. Invalidity of rules not adopted according to article; time limitation.

- (1) A rule adopted after July 1, 2005, 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 25-43-3.103(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.

Non-Legislative Rules

Statements of clarification interpreting existing rules

Statements interpreting the statutes the agency administers

Policy statements that are advisory only

Mississippi Administrative Procedures Law - Rules

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:

- (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.

Mississippi Administrative Procedures Law – Not “Rules”

"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. 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;

Mississippi Administrative Procedures Law – Not “Rules”

"Rule" does not include:

6. 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;
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.

Mississippi Administrative Procedures Law – Not “Rules”

"Rule" does not include:

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;

Mississippi Administrative Procedures Law – Not “Rules”

"Rule" does not include:

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Mississippi Administrative Procedures Law – Declaratory Opinion

25-43-2.103(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. Such written request must clearly set forth the specific facts upon which an opinion is asked for and shall be limited to a single transaction or occurrence. 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.

Mississippi Administrative Procedures Law – Declaratory Opinion

25-43-2.103(2) Each agency shall issue rules that provide for: (a) the form, contents and filing of written requests for declaratory opinions; (b) the procedural rights of persons in relation to the written requests; and (c) the disposition of the written requests. Those rules must describe the classes of circumstances in which the agency will not issue a declaratory opinion.

Harpooned Sharks for Chapter 5: Two Sharks Harpooned!

Two other sharks have taken off for some play time, it seems
It is too early to see if they have permanently gone.

