

**Title 39: UTILITIES**

**Part 101: Underground Facilities Damage Prevention Board Rules**

**Subpart I: Organization, Purpose and Operation of the Board**

**Part 101 Subpart I Chapter 1: Purpose and Scope**

**Rule 1.1** This chapter is adopted in compliance with, and under the authority of, Miss. Code Ann. §77-13-31(1)(a).

*Source: Miss. Code Ann. §77-13-31*

**Rule 1.2** This chapter establishes rules for the Board and its Executive Committee and for the protection of underground utility facilities pursuant to Title 77, Chapter 13 of the Mississippi Code.

*Source: Miss. Code Ann. §77-13-31*

**Rule 1.3** This chapter shall apply to all persons with duties and obligations under Title 77, Chapter 13 of the Mississippi Code.

*Source: Miss. Code Ann. §77-13-31*

**Part 101 Subpart 1 Chapter 02: Duties of the Board**

**Rule 2.1** The duties of the Board are described in Title 77, Chapter 13 of the Mississippi Code and include, but are not limited to the following:

- (1) Enforce the provisions of Title 77, Chapter 13 of the Mississippi Code.
- (2) Where authorized by the Board, notify the Pipeline Safety Division of the Board's need for administrative, investigative, and legal support to enforce Title 77, Chapter 13 of the Mississippi Code, and pay the Pipeline Safety Division for the reasonable cost of said services that are not covered by other funding sources including, but not limited to, appropriations or grants.
- (3) Conduct meetings as described in Miss. Code Ann. § 77-13-29 and the rules adopted by the Board.
- (4) Elect an Executive Committee from among the Board members as described in Miss. Code Ann. § 77-13-29.
- (5) Adopt a budget and promulgate rules and regulations to carry out its responsibilities described in Title 77, Chapter 13 of the Mississippi Code.
- (6) Enter into contracts as the Board deems necessary to carry out its

responsibilities.

- (7) Manage the Underground Damage Prevention Fund created by Miss. Code Ann. § 77-13-35.
- (8) Assess and collect funds as described in Miss. Code Ann. § 77-13-31(2)(c), as deemed necessary to carry out its responsibilities.
- (9) Develop a process for the Executive Committee to investigate allegations that violations have occurred.

*Source:* Miss. Code Ann. §§ 77-13-27, 29, 31, 33 and 35.

**Rule 2.2** Perform any additional duties as may be required by Title 77, Chapter 13 of the Mississippi Code.

*Source:* Miss. Code Ann. §§ 77-13-27, 29, 31, 33 and 35.

### **Part 101 Subpart 1 Chapter 3: Board Organization**

**Rule 3.1** The Board consists of sixteen members, appointed as follows:

- (1) By the Governor:
  - (a) One representative of the telecommunications industry
  - (b) One representative of the electric power industry investor-owned utilities
  - (c) One representative of the cable industry
- (2) By the Lieutenant Governor:
  - (a) One representative of the excavation, utility and/or site construction industry
  - (b) One representative of the Electric Power Associations of Mississippi
  - (c) One representative of the natural gas or liquid transmission industry
  - (d) One representative of the natural gas or liquid distribution industry
- (3) By specified entities:
  - (a) The President of Mississippi 811, Inc., or his designee;
  - (b) The Executive Director of the Mississippi Department of Transportation, or his designee;
  - (c) The Executive Director of the Mississippi Association of Professional Surveyors, Inc., or his designee;

- (d) The Executive Director of the Mississippi Association of Supervisors, or his designee;
- (e) The Executive Director of the Mississippi Municipal League, or his designee;
- (f) The Executive Director of the Mississippi Homebuilders Association, or his designee;
- (g) The Chief Executive Officer of the Mississippi Rural Water Association, or his designee;
- (h) The Executive Director of the American Council of Engineering Companies of Mississippi, or his designee; and
- (i) One representative of the Pipeline Safety Division, serving as an ex officio, nonvoting member.

*Source: Miss. Code Ann. § 77-13-29*

**Part 101 Subpart 1 Chapter 4: Board Member Terms**

**Rule 4.1** The initial term of the appointed members from the telecommunications and the excavation, utility and/or site construction industries shall end December 31, 2017.

*Source: Miss. Code Ann. § 77-13-29*

**Rule 4.2** The initial term of the appointed members from electric power industry investor owned utilities and Electric Power Association of Mississippi shall end December 31, 2019.

*Source: Miss. Code Ann. § 77-13-29*

**Rule 4.3** The initial term of the appointed members from the cable, the natural gas or liquid transmission, and the natural gas or liquid distribution industries shall end December 31, 2021.

*Source: Miss. Code Ann. § 77-13-29*

**Rule 4.4** After the expiration of the initial terms, all appointed members shall serve a term of five (5) years.

*Source: Miss. Code Ann. § 77-13-29*

**Part 101 Subpart 1 Chapter 5: Officers**

**Rule 5.1** The Governor shall appoint the initial chairman of the board, and the initial board shall elect other officers as the board deems necessary. The board shall meet in

August of even numbered years for the purpose of electing a Chairman, and any other officers it deems necessary.

*Source: Miss. Code Ann. § 77-13-29*

**Rule 5.2** The officers of the board shall be as follows:

- (1) **Chairman.** The Chairman shall preside at all meetings of the Board and discharge the duties of the presiding officer, shall be the principal executive officer of the Board, may sign contracts and other instruments authorized by the Board, except in cases where the Board shall expressly delegate that authority to another member, and shall perform whatever other duties the Board may from time to time prescribe.
- (2) **Vice-Chairman.** The Vice-Chairman shall, in the absence of the Chairman, perform the duties and exercise the powers of the Chairman. The Vice-Chairman shall also perform whatever duties and have whatever powers the Board may from time to time assign.
- (3) **Secretary.** The Secretary shall attend all meetings of the Board and shall keep or cause to be kept, true and complete minutes of the proceedings of those meetings. The Secretary shall give or cause to be given, notice of all meetings of the Board, shall be the Public Records Compliance Officer and whatever additional duties the Board may from time to time prescribe.
- (4) **Treasurer.** The Treasurer shall keep full and accurate accounts of receipts and disbursements and shall deposit all Board monies and other valuable effects in the name and to the credit of the Board in a depository or depositories designated by the Board. The Treasurer shall disburse the funds of the Board and shall render to the Chairman or the Board, whenever they may require it, an account of the transactions as Treasurer and the financial condition of the Board. Disbursements of the Board shall require two signatures.
- (5) **Combination of Offices.** Nothing herein shall prohibit the combination of the duties of Secretary and Treasurer and those offices being held by one member of the Board.
- (6) **Other Officers.** Such other officers as are created from time to time by the Board shall have such duties as may be assigned to them by the Board in the minutes of meetings duly adopted, or by Resolution of the Board.

*Source: Miss. Code Ann. § 77-13-29*

**Rule 5.3** The term of each office shall be two years.

*Source: Miss. Code Ann. § 77-13-29*

**Part 101 Subpart 1 Chapter 6: Board Operations**

**Rule 6.1** Rule Making Authority. The Board shall make such rules and regulation as may be necessary to carry out the provisions of the statute.

*Source: Miss. Code Ann. §§ 77-13-29 and 31*

**Rule 6.2** Meetings and Notice. The Board shall meet at the location and on the date and time set by the Chairman upon at least five business days' notice provided by United States mail, electronic mail or personal delivery to every board member. Meeting dates, times, and locations shall be published in the Board's minutes. The Board shall meet no less than three times each calendar year.

*Source: Miss. Code Ann. §§ 77-13-29 and 31*

**Rule 6.3** Audio Meetings. Any Meeting of the Board may be conducted through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A members participating in a meeting by this means is deemed to be present in person at the meeting.

*Source: Miss. Code Ann. §§ 77-13-29 and 31*

**Rule 6.4** Quorum. Eight (8) members of the board shall constitute a quorum.

*Source: Miss. Code Ann. §§ 77-13-29 and 31*

**Rule 6.5** Voting. All members of the Board including the Chairman shall be entitled to vote and to make or second motions. A majority vote of those present is required to pass a motion. A member expecting to be absent for a vote may provide written comments as to his position; however he may not grant a vote by proxy.

*Source: Miss. Code Ann. §§ 77-13-29 and 31*

**Rule 6.6** Action without a Meeting. Any action required or permitted may be taken without a meeting if the action is noticed to all Board Members and approved by a majority of the Members of the Board. The action must be evidenced by one or more written consents describing the action taken, and delivered to the Secretary for inclusion in the minutes or filed with the appropriate records.

*Source: Miss. Code Ann. §§ 77-13-29 and 31*

**Rule 6.7** Robert's Rules of Order. The Chairman shall conduct each Board meeting in accordance with Robert's Rules of order. Committee meetings of the Board shall be conducted in a like manner.

*Source: Miss. Code Ann. §§ 77-13-29 and 31*

**Rule 6.8** Presumption of Assent. A member who is present at a meeting of the Board at which action is taken on any matter shall be presumed to have assented to the action taken unless:

- (1) Such member objects at the beginning of the meeting (or promptly upon such member's arrival) to holding or transacting business at the meeting;
- (2) Such Member's dissent or abstention from the action taken is entered in the minutes of the meeting; or
- (3) Such Member delivers written notice of such Member's dissent or abstention to the presiding officer of the meeting immediately after the adjournment of the meeting.

*Source: Miss. Code Ann. §§ 77-13-29 and 31*

**Rule 6.9** Committees of the Board

- (1) The Chairman, with concurrence of the Board, may from time to time establish and abolish such committees from among the members of the board as may be deemed necessary, expedient or to contribute to the performance of the duties of the Board. The Chairman shall appoint a Chair for each such committee.
- (2) The Chairman, with concurrence of the Board, deems it advantageous or beneficial to the Board, the Chairman may appoint members to a committee who are not members of the Board.
- (3) All Committee members shall serve at the pleasure of the Chairman of the Board. A quorum shall be a majority of the committee. The rules relating to the Board shall apply to all committees.

*Source: Miss. Code Ann. §§ 77-13-29 and 31*

## **Part 101 Subpart 1 Chapter 7: Declaratory Opinions**

**Rule 7.1** This rule governs the form and content of requests for declaratory opinions, and the Board's procedures regarding the requests as required by Mississippi Code § 25-43-2.105.

*Source: Miss. Code Ann. § 25-43-2.105.*

**Rule 7.2** Any person with a substantial interest in the matter may request a declaratory opinion from the Board 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 Board's administration of the law within its primary

jurisdiction. “Primary jurisdiction of the Board” means the Board has a constitutional or statutory grant of authority in the subject matter at issue.

*Source:* Miss. Code Ann. § 25-43-2.105.

**Rule 7.3** The Board will issue a declaratory opinion regarding the applicability to specified facts of:

- (1) a statute administered or enforceable by the Board; or
- (2) a rule promulgated by the Board.

*Source:* Miss. Code Ann. § 25-43-2.105.

**Rule 7.4** The Board 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;
- (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 and 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 by these rules or the requestor failed to follow the procedure set forth in these rules;
- (6) the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the statutes 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 which 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) clear answer is determinable;
- (11) the question presented by the request involves the application of a criminal statute or a set of facts which may constitute a crime;
- (12) the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- (13) the question is currently the subject of an Attorney General's opinion request which has been answered by an Attorney General's opinion;
- (14) a similar request is pending before this Board or any 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 interest of the State, the Board 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 Board 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.

*Source: Miss. Code Ann. § 25-43-2.105.*

**Rule 7.5** Each request must be printed or typewritten, or legibly handwritten. Each request must be submitted on standard business letter-sized paper (8-1/2 inches by 11 inches). Request may be in the form of a letter addressed to the Board.

*Source: Miss. Code Ann. § 25-43-2.105.*

**Rule 7.6** All requests must be mailed, delivered, or transmitted via facsimile to the Board. The request shall clearly state that it is a request for a declaratory opinion. No oral telephone requests or e-mail requests will be accepted.

*Source: Miss. Code Ann. § 25-43-2.105.*

**Rule 7.7** 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.



*Source:* Miss. Code Ann. § 25-43-2.105.

**Rule 7.8** 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. § 25-43-2.105.

**Rule 7.9** Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Board shall, in writing:

- (1) issue a declaratory opinion regarding the specific statute or rule as applied to the specific circumstances;
- (2) decline to issue a declaratory opinion, stating the reason for its action; or
- (3) agree to issue a declaratory opinion by a specific time but not later than ninety (90) days after receipt of the written request.

*Source:* Miss. Code Ann. § 25-43-2.105.

**Rule 7.10** The forty-five (45) day period shall begin on the first State of Mississippi business day on or after the request is received by the Board, whichever is sooner.

*Source:* Miss. Code Ann. § 25-43-2.105.

**Rule 7.11** 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 Board may, in its discretion, withdraw or amend the declaratory opinion for any reason which 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.

*Source:* *Miss. Code Ann. § 25-43-2.105.*

**Rule 7.12** The Board 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.

*Source:* *Miss. Code Ann. § 25-43-2.105.*

**Rule 7.13** Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Public Records Act and the Board's public records request procedure. All declaratory opinions and request shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from the requirements and shall remain confidential.

*Source:* *Miss. Code Ann. § 25-43-2.105.*

**Rule 7.14** Any declaratory opinion rendered by the Board shall be binding only on the Board and the person to whom the opinion is issued. No declaratory opinion will be used as precedent for any transaction or occurrence beyond that set forth by the requesting person.

*Source:* *Miss. Code Ann. § 25-43-2.105.*

## **Part 101 Subpart 1 Chapter 8: Open Records**

**Rule 8.1** Scope. This Rule is adopted pursuant to the requirements of the "Mississippi Public Records Act of 1983". (Miss. Code Ann. 25-61-1 et seq.) Except as provided or authorized by Miss. Code Ann. 25-61-9, 25-61-11 or as may be otherwise provided by law, all records of the Board are hereby declared to be public property. All persons shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of such documents as are in the possession of the Board and in accordance with reasonable written procedural rules adopted by the Board.

*Source:* *Miss. Code Ann. § 25-43-2.105; Miss. Code Ann. §§ 25-61-1, et seq.*

**Rule 8.2** Informal Requests. It is the policy of the Board to encourage and promote public participation in Board affairs and, toward that end, the Board its desire and intent to promptly honor all requests for access to or copies of all documents in the possession of the Board. Informal requests for information or documents may be made orally or in writing to the Executive Secretary of the Board and all reasonable efforts will be made to comply promptly with such requests.

Informal request shall not be considered as requests made under the provisions of the “Mississippi Public Records Act of 1983”

*Source: Miss. Code Ann. § 25-43-2.105; Miss. Code Ann. §§ 25-61-1, et seq.*

**Rule 8.3** Formal Requests. A formal request for documents may be made to the Board pursuant to the provisions of this rule. The Executive Secretary is designated as the Public Records Compliance Officer.

- (1) Form.
  - (a) Any individual seeking to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of the board should make a written request, signed by themselves to be mailed or hand-delivered to the Executive Secretary, Underground Facilities Damage Prevention Board.
  - (b) The written request must be typed or clearly hand printed on a letter size piece of paper and shall specify in detail the public record sought. The request should include, if possible, a description of the type of record, dates, title of a publication, and other information which may aid in locating the record.
  - (c) The written request must specify what the applicant proposes to do with the record, i.e., inspect, copy, etc. state the date and time for the proposed activity; state the number of persons scheduled to participate; and shall provide the name, address, and home and office telephone number of the applicant.
- (2) Time. The Executive Secretary, upon receipt of any such request, shall review same and determine whether the records sought are exempt under the Mississippi Public Records Act, and shall either produce records or access to records or deny access to or production of the records sought within seven (7) working days from the date of the receipt of the request for the production of the record. If the Board is unable to produce a public record by the seventh working day after the request is made, the Board will provide a written explanation to the person making the request stating that the record requested will be produced and specifying with particularity why the records cannot be produced within the seven-day period. Unless there is a mutual agreement of the parties, in no event shall the date for the Board’s production of the request records be any later than fourteen (14) working days from the receipt of the original request.
- (3) Copying. All inspection, copying or mechanical reproduction shall be done in the offices of the Board or such other reasonable place within the State of Mississippi as may be designated by the Board. It shall be the duty of the applicant to contact the Executive Secretary by phone before

noon of the first working day preceding the proposed date set out in the application to determine if same is acceptable and, if not, what date and/or time will be substituted.

(4) Charges.

- (a) The Executive Secretary is authorized to calculate the estimated cost of searching, obtaining from storage, reviewing, shipping and/or duplicating records and to require payment in advance of such estimated charges prior to complying with the request. There shall be reasonable charge to be determined by the Board per page for each copy. Copies printed on both sides (front & back) shall be considered as two pages for copy charge purposes. Mailing cost shall be calculated at the applicable rate for each such mailing. If request involves notice to be given to a third party, the cost of mailing such notice via certified mail return receipt requested shall be charged to the person requesting such public records. In the event the actual cost of such activity exceeds the estimate, the Board is authorized to withhold mailing or delivery of said documents or to delay the inspection until the difference is paid.
- (b) There shall be no charge for inspection of the current Board's records maintained at the Board office. Cost of obtaining records from any state storage facilities and the search for it shall be charged to the applicant.
- (c) The Executive Secretary may waive any or all of the foregoing requirements related to written notice, time, and method of access prepayment of expenses whenever the determination is made that such waiver would be in the public interest.

*Source: Miss. Code Ann. § 25-43-2.105; Miss. Code Ann. §§ 25-61-1, et seq.*

**Rule 8.4** Exempt Materials. If the Executive Secretary determines that the records requested are exempt or privileged under the law, she shall deny the request and shall send the person making the request a statement of the specific exemption relied upon by the Board for the denial. Such denials shall be kept on file for inspection by any person for three (3) years. This file shall be made available for inspection or copying or both during regular office hours to any person upon written request.

*Source: Miss. Code Ann. § 25-43-2.105; Miss. Code Ann. §§ 25-61-1, et seq.*

**Part 101 Subpart 1 Chapter 9: Open Meetings**

**Rule 9.1** This rule is adopted pursuant to the Mississippi Open Meetings Law, (Miss Code Ann 25-41-1 et seq.). All meetings and hearings of the Board shall be open to the general public with the exception of executive sessions held in conformity with the

provisions of the MS Code Ann 25-41-7. Members of the general public are welcome to attend meetings of the Board and are subject to the following standards of conduct:

- (1) Members of the public, who wish to address the Board, are requested to register with the Secretary of the Board. Organized groups must have one (1) spokesperson.
- (2) Upon request, an individual or spokesperson will be allowed to address the Board. Speaking time will be limited to 10 minutes, but may be extended by the presiding officer. The Board may, at its discretion, limit the number of people who wish to speak on any one issue.
- (3) When the Board votes to go into Executive Session, all members of the general public must leave the meeting room.
- (4) Members of the general public will behave in a calm, professional manner and will not attempt to directly or indirectly interrupt a meeting of the Board.
- (5) Any member of the general public who does not comply with these rules will be asked to leave the meeting, and upon their refusal will be removed from the meeting.

*Source: Miss. Code Ann. § 25-43-2.105; Miss. Code Ann. §§ 25-41-1, et seq.*

**Rule 9.2** If members of the general public require special provisions accommodating a qualifying temporary or permanent disability in order to attend a Board meeting, a written request identifying the disability and the accommodations needed must be submitted to the Secretary prior to the meeting. If said request is not submitted in advance and in a timely manner, the availability of on-site accommodations is not guaranteed.

*Source: Miss. Code Ann. § 25-43-2.105; Miss. Code Ann. §§ 25-41-1, et seq.*

## **Part 101 Subpart II: Enforcement**

### **Part 101 Subpart 2 Chapter 01: Definitions**

**Rule 1.1** As used within this chapter, these terms denote the following:

- (1) “Board”, for purposes of this chapter, means the Underground Facilities Damage Prevention Board created by Miss. Code Ann. § 77-13-29.
- (2) “Citation” means written notification from the Executive Secretary to a Respondent stating that Respondent has been found in violation of Title 77, Chapter 13 of the Mississippi Code, and the notification shall at a minimum include the contents described in Rule T7(A).
- (3) “Complainant” means the party submitting a complaint that a violation has occurred.
- (4) “Days” means all days of the week including all weekend days and holidays, unless otherwise noted in these rules.
- (5) “Emergency” means excavation at times of emergency involving danger to life, health or property or a customer service outage.
- (6) “Executive Committee” means the executive committee of the Board as described by Miss. Code Ann. § 77-13-29(12).
- (7) “Executive Secretary” means the executive secretary of the Board.
- (8) “Investigator” means the person the Executive Committee designates to perform investigative duties, and could include one or more of the following people: an investigator of the Pipeline Safety Division, the Executive Secretary, a member of the Executive Committee, or any other person designated to perform such services.
- (9) “Mississippi 811” means Mississippi 811, Inc.
- (10) “Paper hearing” means the submission and consideration of written pleadings, documentary evidence, and written evidence only.
- (11) “Pipeline Safety Division” means the Pipeline Safety Division of the Mississippi Public Service Commission.
- (12) “Respondent” means the person or entity that is alleged to have committed a violation.
- (13) “Service” or “Served” or “Serve” is defined in Miss. Code Ann.

§25-43-1.106(2).

- (14) “Show cause letter” means a letter from the Executive Committee to a Respondent which includes at a minimum, the contents described in Rule T7(A), and directs a Respondent to show cause why Respondent should not be compelled to comply with the findings of the Executive Committee.
- (15) “Violation” means any conduct, act, or failure to act, prohibited by Title 77, Chapter 13 of the Mississippi Code.

*Source: Miss. Code Ann. § 77-13-31*

## **Part 101 Subpart 2 Chapter 2: Duties of the Executive Committee**

**Rule 2.1** The duties of the Executive Committee are described in Title 77, Chapter 13 of the Mississippi Code and include, but are not limited to the following:

- (1) Conduct meetings and hearings as described in Miss. Code Ann. § 77-13-29 and the rules promulgated by the Board.
- (2) Investigate allegations of violations in accordance with the rules and procedures promulgated by the Board.
- (3) Determine whether violations have occurred.
- (4) Dismiss those complaints in which it determines a violation has not occurred.
- (5) Upon finding that a violation has occurred, determine and levy penalties, order training, and otherwise take action as described in Miss. Code Ann. § 77-13-27 and the rules promulgated by the Board.
- (6) Determine whether an investigator is required to investigate allegations that a violation has occurred, and inform the investigator accordingly.

*Source: Miss. Code Ann. §§ 77-13-27, 29, 31 and 33.*

**Rule 2.2** The Executive Committee shall elect a chairman and vice chairman to serve for one year terms.

*Source: Miss. Code Ann. §§ 77-13-27, 29, 31 and 33.*

## **Part 101 Subpart 2 Chapter 3: Conflicts Of Interest by Members of the Executive Committee**

**Rule 3.1** An Executive Committee member shall not participate in any discussion or vote on any of the following matters:

- (1) One in which the Executive Committee member or the member's employer is the complainant or respondent.
- (2) One in which the member reasonably believes that he is unable to act impartially and independently as a result of the circumstances related to an alleged violation.

*Source: Miss. Code Ann. § 77-13-29 (12)*

**Rule 3.2** An Executive Committee member disqualified from voting on a matter shall notify all members of the Executive Committee of said disqualification, immediately upon discovery that a basis for disqualification exists.

*Source: Miss. Code Ann. § 77-13-29 (12)*

#### **Part 101 Subpart 2 Chapter 4: Initiation of Complaint**

**Rule 4.1** Any complaint that a violation has occurred shall be made as follows:

- (1) By submitting within thirty (30) days of when the Complainant knew or should reasonably have known of an alleged violation, a completed online complaint form adopted by the Board, which shall include at a minimum:
  - (a) the name, address, telephone number, and email address of the complainant
  - (b) the date, location, and nature of the alleged violation
  - (c) a description of all facts and evidence supporting the complaint
  - (d) documentary and photographic evidence supporting the complaint
  - (e) any other information that the complaining party considers relevant
- (2) The alleged violation form shall also include, to the extent known by the Complainant, the name, address, telephone number, and email address of the Respondent
- (3) By submitting a complaint in any other method adopted by the Board.

*Source: Miss. Code Ann. §§ 77-13-31 and 33.*

**Rule 4.2** The Executive Secretary or other designee of the Executive Committee shall initially review the complaint to ensure that all required information has been provided, and shall within seven days following receipt of a complaint, notify the complainant that the complaint has been received, and of any information or documents missing from the complaint.

*Source: Miss. Code Ann. §§ 77-13-31 and 33.*



**Rule 4.3** The complainant shall have a duty to preserve and maintain all documents and other evidence in support of the complaint, and shall produce same upon request by the Board or Executive Committee.

*Source: Miss. Code Ann. §§ 77-13-31 and 33.*

**Rule 4.4** At any point prior to issuance of a citation or show cause letter, the Complainant may notify the Executive Committee that the alleged violation form is withdrawn, and the Executive Committee will dismiss the matter against the Respondent.

*Source: Miss. Code Ann. §§ 77-13-31 and 33.*

### **Part 101 Subpart 2 Chapter 5: Initial Action on Complaint**

**Rule 5.1** Upon receipt of a submitted complaint, the Executive Committee shall take the following actions:

The executive secretary or other designee of the Executive Committee shall initially review the complaint, and in the limited circumstances described in Enforcement Rule 10.2, may issue a citation to the Respondent which includes the following:

- (1) A description of the violation;
- (2) The date and location of the violation;
- (3) Reference to the statute or rule that is considered violated;
- (4) The civil penalty that may be paid and/or training completed within thirty (30) days to terminate the matter; and
- (5) A description of the respondent's rights and obligations should he not pay the civil penalty and/or complete training within thirty (30) days.

*Source: Miss. Code Ann. §§ 77-13-27, 29 and 31.*

**Rule 5.2** The Executive Secretary or other designee of the Executive Committee may request assistance of the Committee Chairman to determine if a complaint falls within the limited circumstances described in Enforcement Rule 10.2 prior to issuing the citation described in paragraph (A) above.

*Source: Miss. Code Ann. §§ 77-13-27, 29 and 31.*

**Rule 5.3** If the complaint does not fall within routine violations as determined by the Executive Secretary or other designee of the Executive Committee under Enforcement Rule 10.2, the complaint shall be referred to the Executive Committee as a whole, which may take one of the following actions:

- (1) Find that a violation has occurred, determine an appropriate penalty pursuant to the guidelines described in Enforcement Rule 7.1, and return it to the Executive Secretary to issue a citation to the respondent which includes the contents described in (A) of this rule;
- (2) Find that a violation has not occurred, inform the complainant accordingly, and dismiss the complaint; or
- (3) Find that further investigation of the complaint is required, and proceed according to Enforcement Rule 6.1.

*Source: Miss. Code Ann. §§ 77-13-27, 29 and 31.*

### **Part 101 Subpart 2 Chapter 6: Investigations of the Complaint**

**Rule 6.1** In cases in which the Executive Committee determines that further investigation of a complaint is required as described in Enforcement Rule 5.3(3), the Executive Committee shall do the following:

- (1) Serve notice of the complaint along with a request for documents and other evidence related to the complaint upon the Respondent, in accordance with Miss. Code Ann. §25-43-1.106.
- (2) Perform an investigation of the alleged violations contained in the complaint. The investigation may include one or more of the following:
  - (a) A written request to the Pipeline Safety Division that an investigator from the division perform an investigation of the complaint pursuant to the rules and processes adopted by the Board.
  - (b) An investigation performed by the Executive Committee or its staff.
  - (c) An investigation performed by a third party approved by the Board.
- (3) Determine whether a violation has occurred based on the results of the investigation.
- (4) Where a violation has occurred, determine an appropriate penalty pursuant to the guidelines described in Enforcement Rule 7.1, and issue a show cause letter to the respondent which includes the contents described in Enforcement Rule 5.1.
- (5) Where a violation has not occurred, inform the complainant and respondent accordingly, and dismiss the complaint.

*Source: Miss. Code Ann. §§ 77-13-27, 29 and 31.*

## **Part 101 Subpart 2 Chapter 7: Guidelines for Application of Penalties**

**Rule 7.1** The Executive Committee shall determine and assess penalties according to Miss. Code Ann. § 77-13-27. In determining the penalty for a violation, the Executive Committee shall consider the following:

- (1) The Respondent's demonstrated history of one-call, design, and excavation practices, including the following:
  - (a) The number of locate requests received and responded to.
  - (b) The number of locates completed.
  - (c) The number of one calls placed.
  - (d) The number of excavations completed.
  - (e) The number of design or development projects.
- (2) The nature, circumstances, and gravity of the violation, including the amount of damage involved in relation to the violation, and whether it resulted in death, serious injury, dismemberment, or a significant threat to public safety.
- (3) The organizational size of the Respondent.
- (4) The history or number of violations by the respondent based on information maintained by the Board.
- (5) The good faith effort on the Respondent's part in attempting to achieve compliance after the violation was identified.
- (6) The cooperativeness of the Respondent.
- (7) And other factors which would tend to aggravate or mitigate fault.

*Source: Miss. Code Ann. §§ 77-13-27 and 29.*

## **Part 101 Subpart 2 Chapter 8: Respondent's Rights and Obligations**

**Rule 8.1** In cases in which a citation or show cause letter is issued to a Respondent, the Respondent may:

- (1) Pay the civil penalty and/or perform the ordered training and applicable costs within thirty (30) days of the citation or show cause letter issuance date, and upon payment of the penalty and performance of the ordered training, the matter shall be closed.
- (2) Contest the citation or show cause letter in writing within thirty (30) days of

its issuance date, in which case, the Executive Committee shall set a date to conduct a hearing of the matter, and notify the Respondent and Complainant accordingly.

*Source: Miss. Code Ann. 77-13-27*

**Rule 8.2** Should the Respondent take no action in response to a citation within thirty (30) days of its issuance date the Executive Committee shall set a date to conduct a hearing of the matter, and notify the Respondent and Complainant accordingly. The hearing described in this section may be a paper hearing as defined in these rules.

*Source: Miss. Code Ann. 77-13-27*

**Rule 8.3** Should the Respondent take no action in response to the show cause letter within thirty (30) days of its issuance date, the penalties and findings included in the show cause letter shall become final and binding upon the Respondent.

*Source: Miss. Code Ann. 77-13-27*

**Part 101 Subpart 2 Chapter 9: Hearings by the Executive Committee**

**Rule 9.1** The Executive Committee shall conduct hearings in accordance with these rules and Title 77, Chapter 13 of the Mississippi Code. The following shall apply to hearings conducted by the Executive Committee:

- (1) The Respondent and Complainant shall receive notice at least thirty (30) days prior to the hearing. The notice shall specify the docket or identifying number of the proceeding and a brief description of the nature of the proceedings and shall, in addition, contain:
  - (a) A statement of the date, time and place of the public hearing proposed; and/or
  - (b) A statement of the date by which evidence, objections, protests or comments must be filed in order to be considered by the Executive Committee.
- (2) All hearings conducted by the Executive Committee shall be open to the public.
- (3) The Executive Committee at hearings is not bound by the Mississippi Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any order made, approved or confirmed by the Executive Committee. The Executive Committee, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or inadmissible on the

basis of any evidentiary privilege provided by statute or recognized in the courts of Mississippi, and may order the presentation of such evidence to stop. All other evidence may be admitted if it is a type generally relied upon by prudent persons in the conduct of their affairs.

- (4) The Executive Committee may permit photostatic, photographic or other copies of documents, or any part or parts thereof, to be introduced in evidence upon a satisfactory showing of their correctness or upon showing that it would be impractical or inconvenient to introduce the originals.
- (5) Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered.
- (6) All testimony presented in formal hearings will be given under oath. Before testifying each witness must swear or affirm that the testimony the witness will give before the Executive Committee is the truth, the whole truth, and nothing but the truth.
- (7) After Respondent's failure to appear at the time and place set for hearing, the Executive Committee may order any relief against the Respondent authorized by law.
- (8) The Executive Committee may designate one of its members or attorneys, including any special assistant attorney general or state agency attorney assigned to the Board, to act as a hearing examiner regarding any and all matters to be considered at a hearing. Such officer may exercise all authority held by the Executive Committee in conducting the hearing. In such cases, the hearing examiner shall, within thirty (30) days of the hearing, provide written findings and recommendations to the Executive Committee with respect to the matters considered at the hearing. The Executive Committee may adopt, reject, or modify the findings and recommendations of the hearing examiner when preparing its final order.

*Source: Miss. Code Ann. §§ 77-13-27, 29 and 33.*

**Part 101 Subpart 2 Chapter 10: Routine Violations as Determined by the Executive Secretary**

**Rule 10.1** Where upon initial review of a complaint, documents submitted simultaneously therewith, and the applicable locate ticket or tickets provided by Mississippi 811, the Executive Secretary may issue a citation to the respondent pursuant to Enforcement Rule 5.1 if the Executive Secretary determines:

- (1) The alleged violation falls within a category of violations described in Enforcement Rule 10.2 and that a violation has occurred based exclusively on information included in the submitted complaint, the documents provided therewith, and the applicable locate ticket or tickets provided by

Mississippi 811.

*Source: Miss. Code Ann. §§ 77-13-27 and 29*

**Rule 10.2** The Executive Secretary may issue citations without any further investigation or executive committee action, for the following violations:

- (1) The excavation complained of occurred after the expiration of the subject locate ticket.
- (2) The excavation complained of commenced less than two working days from the time Mississippi 811 processed the locate ticket for the planned excavation.
- (3) The excavator failed to make a utility locate request with Mississippi 811 prior to commencement of the subject excavation.
- (4) The utility owner or operator fails to comply with the deadlines set forth in Miss. Code Ann § 77-13-9.

*Source: Miss. Code Ann. §§ 77-13-27 and 29*

**Part 101 Subpart 2 Chapter 11: Routine Maintenance Activities**

**Rule 11.1** For an activity to be Routine Maintenance, the activity must be performed consistent with the requirements of Mississippi Code 77-13-3(i)(vi) and therefore should:

1. Be carried out by or for those responsible for publicly maintained roadways and rights-of-way;
2. Occur entirely within the public right of way;
3. Not penetrate the earth to a depth of more than 12 inches and,
4. Shall be carried out with reasonable care so as to protect any underground facilities placed in the right-of-way.

*Source: Miss. Code Ann. §77-13-3(i)*

**Rule 11.2** The following activities, if performed in accordance with Rule 11.1, shall be considered Routine Maintenance:

1. Grass and brush cutting.
2. Removing dead, dying or other trees considered a hazard to the public.
3. Removing litter, trash, animal carcasses and other debris.
4. Installation of pavement markings.
5. Milling the surface of pavements to remove defective pavement.
6. Roadway base repair requiring excavation and backfill of twelve (12) inches or less.
7. Resurfacing or repairing paved interstates, highways, streets, roads, or sidewalks.
8. Addition of granular material and/or light machine blading of granular surfaces to maintain a roadway surface.
9. Blade away built up grass, soil, granular material, etc. from shoulders to allow proper drainage away from roadway surfaces.
10. Repair washes on roadway shoulders and slopes to replace material that has eroded away.
11. Perform ditch blading to replace material eroded away and to remove material that has silted into ditch to insure proper drainage.
12. Replacing traffic signs and signals in the existing hole.
13. Cleaning debris from inlets and outlets of culverts and box bridges.
14. Bridge repair that does not include driving additional piling.
15. Bridge approach and roadway guardrail repair that does not involve adding new posts.
16. Debris and drift removal from bridges over waterways.
17. Storm drain inlet clean out and repair.

*Source: Miss. Code Ann. §77-13-3(i)*

**Rule 11.3** Work that results in lowering of the elevation of the roadbed, adjacent shoulder or drainage culverts or ditches, except as allowed in 11.2 above, shall be considered Construction and not Routine Maintenance for purposes of these rules.

*Source: Miss. Code Ann. §77-13-3(i)*

**Part 101 Subpart 2 Chapter 12: Payment of Penalties**

**Rule 12.1** Penalties and costs shall be paid to the Board in any method adopted by the Board.

*Source: Miss. Code Ann. §§ 77-13-31 and 35*