

ALABAMA DEPARTMENT OF TRANSPORTATION
EXECUTIVE DIVISION
ADMINISTRATIVE CODE

CHAPTER 450-1-2
ADMINISTRATIVE PROCEDURES

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| 450-1-2-.01 | <u>Petition For Adoption, Amendment Or Repealer Of Rules.</u> |

(1) Any interested person may petition the Alabama Department of Transportation requesting the adoption, amendment or repeal of a rule.

(2) A petition shall adhere to the form described below. Petitions not in substantial compliance with the prescribed form shall be returned to the petitioner for correction.

(a) The 60-day time limit described in Code of Ala. 1975, §41-22-8, shall start with the receipt of the petition, in proper form, by the Department.

(b) The petition shall be on white paper, 8 1/2" x 11" in size, with no reverse side entries. The original and three legible copies shall be filed with the Department.

(c) The petition shall be delivered by personal service or First Class Mail to:

ALABAMA DEPARTMENT OF TRANSPORTATION
ATTN: ADMINISTRATIVE PROCEDURE SECRETARY
LEGAL DIVISION
ROOM 147
1409 COLISEUM BOULEVARD
MONTGOMERY, AL 36110

(d) The petition shall be set out in numbered paragraphs as follows:

1. Petitioner's name:
2. The full address of the petitioner:
3. The petitioner's telephone number:
4. Action requested (adoption of the proposed rule, amendment of a rule or repeal of a rule):
5. (In the case of a petition for adoption) A concise statement of the proposed rule in rule form:
6. A statement of the reasons for the above action:

(3) A general statement concerning rules must not be accepted as a petition for adoption, amendment or repeal of a rule.

(4) More than one petition may be submitted at any given time, but each must conform to the above requirements. No more than one request for either the adoption, amendment or repeal of a single rule shall be contained in each petition.

(5) The Department, upon receipt of a petition, shall take the following action:

1. Receipt of petition shall be recorded;
2. Petitions not in reasonable compliance with this rule shall be promptly returned to the petitioner with modifications or additional information required to make the petition comply with this rule indicated;
3. Receipt of petition shall be acknowledged to the petitioner; and

4. The disposition of petitions for rule making shall be determined by the Department.

(6) The Department, in determining the disposition of the petition, may request written memoranda from personnel within the Department, input from interested persons outside the Department, or an oral presentation by the petitioner elaborating upon the reasons for the requested rule activity. The Department may conduct a hearing in order to receive oral presentations and evidence.

(7) Within 60 days after submission of a petition, the Department either shall deny the petition in writing on the merits, stating the reasons for the denial, or initiate rule making proceedings in accordance with Code of Ala. 1975, §41-22-5.

Author: Jim R. Ippolito, Jr., Chief Counsel

Statutory Authority: Code of Ala. 1975, §23-1-59.

History: Filed September 30, 1982. **Amended:** Filed May 17, 2013; effective June 21, 2013.

450-1-2-.02 Petition For Declaratory Ruling.

(1) A declaratory ruling is a formal written ruling issued to members of the public by the director with respect to the validity of a rule or with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by it or with respect to the meaning and scope of any order of the Department.

(a) A declaratory ruling is binding on the Department, and the person requesting it unless it is altered or set aside by a court in a proper proceeding.

(b) Such rulings are subject to review in the circuit court of Montgomery County, unless otherwise specifically provided by statute, in the manner provided in Code of Ala. 1975, §41-22-12, for the review of decisions in contested cases.

(c) Nothing herein shall prevent any individual from seeking informal advice on any pertinent subject from the Department.

(2) A petition for a declaratory ruling may be filed by any person substantially affected.

(3) A petition for a declaratory ruling shall adhere to the form described below. Petitions not in substantial compliance with the prescribed form shall be returned to the petitioner for correction.

(a) The 45-day time limit described in Code of Ala. 1975, §41-22-11(b), shall start with the receipt of the petition, in proper form, by the Department.

(b) Petition shall be on white paper, 8 1/2" x 11" in size, with no reverse side entries. The original and three legible copies shall be filed with the Department.

(c) The petition shall be delivered by personal service or First Class Mail to the:

ALABAMA DEPARTMENT OF TRANSPORTATION
ATTN: ADMINISTRATIVE PROCEDURE SECRETARY
LEGAL DIVISION
ROOM 147,
1409 COLISEUM BOULEVARD
MONTGOMERY, AL 36110

ALABAMA DEPARTMENT OF TRANSPORTATION
LEGAL DIVISION
ROOM 147
1409 COLISEUM BOULEVARD
MONTGOMERY, ALABAMA 36110

IN RE:

THE PETITION OF _____ Docket No. _____
(state petitioners name) _____

(filled in by dept.)

FOR A DECLARATORY RULING ON _____
(state rule number, statute for
which interpretation sought, etc.)

PETITION FOR A
DECLARATORY RULING

(d) The body petition shall be set out in numbered paragraphs as follows:

1. Petitioner's name:

2. Petitioner's full address:
3. All rules or statutes that may be involved in the petition, if known:
4. Clear and concise statement of the precise factual situation involved:
5. The exact question to which an answer is desired:
6. The reasons for submitting the petition:
7. Full disclosure of the petitioner's interest:
8. Statement as to whether the petitioner's case is presently under consideration by the Department or in any pending proceeding:
9. Subscription and verification by the petitioner before a notary public:

(4) Upon receipt of a petition for a declaratory ruling, the Department shall enter the date of receipt of the petition and the docket number and notify the petitioner of receipt of petition, the date and the docket number.

(a) The Department may then:

1. Notify the petitioner that no declaratory ruling will be issued;
2. Immediately issue a declaratory ruling;
3. Forward the petition to the proper office for investigation to determine if a ruling should be issued and, if so, receive the recommended contents of such a ruling;
4. If either the director or the applicable office deems it necessary, a hearing officer shall be requested to schedule a hearing as promptly as possible for the submission of testimony by the petitioner and reasonable notification given to all interested persons of the time and place for such a hearing; or
5. If either the director or the applicable office deems it necessary, the petitioner may be requested to submit a written brief concerning the petition.

(b) If a hearing is conducted, a transcript shall be given to the applicable office, which will then forward its recommendations or a recommended ruling to the director. The director shall, upon due consideration of the evidence and recommendations, and within 45 days of the request for such ruling:

1. Issue a binding declaratory ruling; or
2. Notify the petitioner that no declaratory ruling will be issued and the reasons therefor.

(c) If no hearing is conducted, the director, shall, after receiving the recommendation of the applicable office, and within 45 days from the receipt of the petition:

1. Issue a binding declaratory ruling; or
2. Notify the petitioner that no ruling will be issued.

(5) All declaratory rulings shall be issued by the director. A declaratory ruling shall have the same status as an order rendered in a contested case, and shall be final for purposes of appeal and judicial review. Failure to issue a declaratory ruling within 45 days of the request of such ruling shall constitute a denial of the request, and shall be subject to judicial review.

Author: Jim R. Ippolito, Jr., Chief Counsel

Statutory Authority: Code of Ala. 1975, §23-1-59.

History: Filed September 30, 1982. **Amended:** Filed May 17, 2013; effective June 21, 2013.

450-1-2-.03 Methods Of Obtaining Information Or Making Submissions Or Requests. The public may obtain information or make submissions or requests pertaining to any subject not provided for elsewhere by statute or rule by contacting the Alabama Department of Transportation, Attn: Administrative Procedure Secretary, Legal Division Room 147, 1409 Coliseum Boulevard, Montgomery, AL 36110.

(a) Contact may be made by telephone, in person, or by First Class Mail.

Author: Jim R. Ippolito, Jr., Chief Counsel

Statutory Authority: Code of Ala. 1975, §23-1-59.

History: Filed September 30, 1982. **Amended:** Filed May 17, 2013; effective June 21, 2013.

450-1-2-.04 Public Access To Rules, Orders, Etc.

(1) The Alabama Department of Transportation Administrative Code, written statements of policy, final orders, decisions or opinions issued or used by the Department in the discharge of its functions, shall be available for public inspection and copying at cost as provided in Rule 450-1-1-.09.

Author: Jim R. Ippolito, Jr., Chief Counsel

Statutory Authority: Code of Ala. 1975, §23-1-59.

History: Filed September 30, 1982. **Amended:** Filed May 17, 2013; effective June 21, 2013.

450-1-2-.05 Advance Notice Of Rule Making Procedures.

(1) Notice by First Class Mail shall be given to all persons who pay the cost of such mailing and who have made timely request of the Department for advance notice of its rule making proceedings.

(a) Timely requests shall be those received by the Department prior to the date of publication of the next notice of intent to adopt, amend, or repeal rules in the Alabama Administrative Monthly.

(b) The requests shall be delivered by First Class Mail to the Alabama Department of Transportation, Attn: Administrative Procedure Secretary, Legal Division, Room 147, 1409 Coliseum Boulevard, Montgomery, AL 36110.

(c) The requests shall be in letter form and set out in numbered paragraphs as follows:

1. Subject: Request for advance notice of intent to adopt, amend or repeal rules.

2. Submitted to: Alabama Highway Department

3. Date of Request:

4. Requester's name:

5. Requester's business name of affiliation:

6. Complete mailing address to which notice shall be sent:

(2) The cost of advance notice shall be \$12.00 per fiscal year (October 1 through September 30) or, for a partial fiscal year, \$1.00 for each month remaining therein.

(a) Full payment shall accompany the request.

(b) Payment shall be for a full fiscal year or part thereof only.

(c) Payment shall be by certified check, cashier's check or money order.

(3) Notice of expiration and renewal application shall be mailed at the end of each fiscal year.

(4) Requests shall continue in effect, providing that the renewal form and full payment is timely received by the Department.

(5) If timely renewal form and payment is not received, subscription shall be discontinued without further notice, and shall be reinstated only upon the receipt of a new request as provided above.

Author: Jim R. Ippolito, Jr., Chief Counsel

Statutory Authority: Code of Ala. 1975, §23-1-59.

History: Filed September 30, 1982. **Amended:** Filed May 17, 2013; effective June 21, 2013.

450-1-2-.06 Copies Of Records. Repealed

Author: Jim R. Ippolito, Jr., Chief Counsel

Statutory Authority: Code of Ala. 1975, §23-1-59.

History: Filed September 30, 1982. **Repealed:** Filed May 17, 2013; effective June 21, 2013.

450-1-2-.07 Notification Of Persons Who May Be Affected By The Adoption Of An Emergency Rule.

In the event that the Department finds it necessary to adopt an emergency rule under the provisions of Code of Ala. 1975, §41-22-5(b), the Department shall, prior to indexing and publication, make reasonable efforts to apprise the persons who may be affected by the emergency rule, as required by Code of Ala. 1975, §41-22-5b.

(a) "Reasonable efforts," as used above, shall consist of the expeditious mailing of a copy of the emergency rule to those persons who have complied with the provisions of Alabama Department of Transportation Administrative Code Rule 450-1-2-.05.

Author: Jim R. Ippolito, Jr., Chief Counsel

Statutory Authority: Code of Ala. 1975, §23-1-59.

History: Filed September 30, 1982. **Amended:** Filed May 17, 2013; effective June 21, 2013.

450-1-2-.08 Subscription To Alabama Department of Transportation Administrative Code.

(1) A subscription to the Alabama Department of Transportation Administrative Code shall be made available to those persons making written requests beginning in November of 1982, and each November thereafter. A subscription notification mailing list shall be established for this purpose.

(a) A request to be added to the subscription notification mailing list shall be mailed to the Alabama Department of Transportation, Attn: Administrative Procedure Secretary, Legal Division Room 147, 1409 Coliseum Boulevard, Montgomery, AL 36110.

(b) Requests shall be in letter form and shall be set out in numbered paragraphs, as follows:

1. Subject: Request to be added to the subscription notification mailing list.

2. For: The Alabama Department of Transportation Administrative Code.

3. Date of request:

4. Name of requestor:

5. Business name or affiliation:

6. Complete mailing address to which notice shall be sent:

7. Requester's telephone number:

(2) In November of each year notice shall be sent to those persons appearing on the mailing list of the availability and cost of:

1. A complete copy of the Alabama Department of Transportation Administrative Code as of the end of the previous fiscal year, and

2. Only those supplements to the Alabama Department of Transportation Administrative Code which occurred during the previous fiscal year.

(3) An order blank shall be provided.

(4) Failure to order shall result in removal from the mailing list unless a new request is received.

(5) All costs shall be determined on a cost-per-page basis, to be established prior to the mailing of notices.

(a) Full payment shall accompany the order blank.

(b) Payment shall be by certified check, cashier's check or money order.

(6) Requestors shall be responsible for notifying the Department of any change of name or mailing address.

(a) Notification shall be in letter form and set out in numbered paragraphs as follows:

1. Subject: Change of Name or Address

2. Mailing List: The Alabama Department of Transportation Administrative Code Subscription Notification List.

3. Date of Change:

4. Previous Listing: (name, business name or affiliation, complete mailing address and telephone number):

5. New Listing: (name, business name or affiliation, complete mailing address, and telephone number):

(b) Notification shall be mailed to the address in Section (1)(a), above.

Author: Jim R. Ippolito, Jr., Chief Counsel

Statutory Authority: Code of Ala. 1975, §23-1-59.

History: Filed September 30, 1982. **Amended:** Filed May 17, 2013; effective June 21, 2013.

450-1-2-.09 Rules Omitted From The Alabama Department Of Transportation Administrative Code.

Author: Jim R. Ippolito, Jr., Chief Counsel

Statutory Authority: Code of Ala. 1975, §23-1-59.

History: Filed September 30, 1982. **Repealed:** Filed May 17, 2013; effective June 21, 2013.