



Missouri State Rulemaking Manual

JOHN R. ASHCROFT

SECRETARY OF STATE

sos.mo.gov



JOHN R. ASHCROFT
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

EXECUTIVE SERVICES

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Dear Fellow Missourians:

At the Missouri Secretary of State's office, we are tasked with prescribing uniform procedures for the promulgation of administrative rules under Section 536.023, RSMo. My office periodically updates the *Missouri State Rulemaking Manual* with new information and features so that the most current information is available. We are pleased to present an updated rulemaking manual as a valuable resource when drafting new rules, revising existing rules, or rescinding present rules.

My office is committed to transparency and accountability, and setting the highest priority on making information accessible in a timely and convenient manner. Not only should the rulemaking process be "user friendly", I believe it should be easily accessible to those who wish to see if proposed or revised rules will affect them.

We are available to provide assistance to you during the rulemaking process as well as to the general public in finding rules that could affect their everyday lives. Please feel free to email rules@sos.mo.gov or call (573) 751-4015 if you have questions.

Sincerely,


John R. Ashcroft

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Foreword

Section 536.023, RSMo, charges the Office of the Secretary of State with the duty, as “publisher,” to provide the guidelines and procedures for numbering, indexing, and publishing of all rules, notices of proposed rules, and orders of rulemaking in the *Code of State Regulations* and the *Missouri Register*.

To this end, we provide the *Missouri State Rulemaking Manual*, which is designed to be a tool for the user in making the rule-making process a less burdensome one.

The rulemaking manual was last updated in August 2019. In this updated version, we have maintained a user-friendly approach to the process.

We continue to strive to better serve you in the rulemaking process. If you have questions, tips, suggestions, or comments, please feel free to contact the Administrative Rules staff at rules@sos.mo.gov or call the Administrative Rules’ main number (573) 751-4015 or fax to (573) 751-3032. We are here to assist you in any way we can and hope you will not hesitate to contact us.

Administrative Rules
Office of the Secretary of State

Secretary of State, Administrative Rules Staff

Curtis W. Treat

Editor-in-Chief
curtis.treat@sos.mo.gov
(573) 751-2022

John C. Stegmann

Managing Editor
john.stegmann@sos.mo.gov
(573) 522-2196

Vonne Kilbourn

Editor
vonne.kilbourn@sos.mo.gov
(573) 751-1818

Jennifer Moore

Associate Editor
jennifer.moore@sos.mo.gov
(573) 522-2593

Jacqueline D. White

Publication Specialist
jacqueline.white@sos.mo.gov
(573) 526-1259

Tammy Winkelman

Administrative Aide
tammy.winkelman@sos.mo.gov
(573) 751-4015



Our Duties to State Agencies and the Public

The duties of Administrative Rules of the Office of the Secretary of State are set forth in Chapter 536, RSMo. Specifically, we are designated as the publisher of the *Missouri Register* and *Code of State Regulations*. Additionally, it is our privilege and responsibility to assist members of the public and state agencies in the rulemaking process. It is our hope that we can make the process as “user friendly” as possible, and we stand ready to assist you in any way we can with the rulemaking process.

We offer to you the *Missouri State Rulemaking Manual* as a tool designed to assist you in the rulemaking process. Additionally, we will provide to you, at no cost, rulemaking classes to train you and/or your staff in the proper procedural steps of the rulemaking process. Classes can be in person or virtual. We believe this class offers some tips and advice that are beneficial to all, from the seasoned user of the rulemaking process to the new user, who is designated as the person who must prepare rulemakings.

To this end, section 536.023, RSMo, specifically states that the Office of the Secretary of State shall prescribe, in writing, the uniform procedures for the numbering, indexing, form, and publication of all rules, notices of proposed rulemaking, and orders of rulemaking. These procedures can be found in the *Missouri State Rulemaking Manual*, published by Administrative Rules. In addition, Administrative Rules has adopted the *United States Government Printing Office Style Manual* (GPO Style Manual) (which can be found at govinfo.gov/content/pkg/GPO-STYLEMANUAL-2016/pdf/GPO-STYLEMANUAL-2016.pdf) as the official style guide for the publishing of rules.

Additionally, the Office of the Secretary of State establishes a form which each state agency must use in compiling the fiscal note and declaration required by sections 536.200, 536.205, and 536.215, RSMo, which is available at sos.mo.gov/adrules/forms.

We are also given statutory authority to correct typographical errors or spelling errors in the publication of rules (see section 536.033, RSMo). We always communicate with the agency involved and seek your input regarding the suggested corrections for publication. You may communicate with us via email, telephone, fax, or in person, whichever you prefer. You will find our email address located at the front of this manual.

The Joint Committee on Administrative Rules also has separate authority relating to rulemaking that is specifically set out in the statutes. See section 536.028, RSMo.

Missouri Register

The *Missouri Register* is published by the secretary of state as required by section 536.015, RSMo. It is published online twice each month and organized in the format established by the secretary of state. The function of the *Missouri Register* is to encourage and solicit public participation in the rulemaking process. The *Missouri Register* is organized into the following sections:

Table of Contents—A list of agencies with rules in the current issue and the deadline dates for filing and publication in the *Missouri Register* and the *Code of State Regulations*.

Emergency Rules—Emergency rulemakings promulgated under the provisions of section 536.025, RSMo.

Executive Orders—All executive orders issued (by the governor) are published under the provisions of section 536.035.2., RSMo.

Proposed Rules—New rules, amended rules, or rescissions are published under the provisions of section 536.021, RSMo.

Orders of Rulemaking—Final versions of rules adopted, amended, rescinded, or withdrawn under the provisions of section 536.021, RSMo.

In Additions—Notices required to be published in the *Missouri Register*.

Rules Under Consideration—An agency may solicit comments on subject matter pursuant to section 536.026, RSMo.

Other Documents—This includes the Contractor Debarment List, Construction Transient List, and Corporate Dissolutions.

Rule Changes Since Update, Emergency Rule Table, Executive Orders Table, Register General Index—User guides which are updated each publication and are designed to assist users in finding rules that are in the process of rulemaking.

Free access to the Register is available on the Internet at:

sos.mo.gov/adrules/moreg/moreg

Missouri Code of State Regulations

The *Missouri Code of State Regulations* is the final product in the rulemaking process. It is also referred to as the *Code of State Regulations* or simply the *Code*.

Administrative Rules of the Office of the Secretary of State publishes the *Missouri Code of State Regulations*. The *Code* is published on the Internet. The *Code* is updated monthly and, although the total number of pages changes from month-to-month, it contains approximately eleven thousand (11,000) pages.

Rules, amendments, and rescissions are published in the *Code* only after completing the rulemaking process. Once a final order of rulemaking has been published in the *Missouri Register* that rulemaking is updated in *Code*.

Final orders that appear in both the first and middle of the month *Missouri Registers* are published in the *Code* on the last day of that same month. For example, all orders published in the March 1 and March 15 issues of the *Missouri Register* are published in the *Code of State Regulations* update on March 31. In most cases the rulemaking becomes effective thirty (30) days after it is published in the *Code* (see **Effective Dates** which follows).

Free access to the *Code* is available on the Internet at sos.mo.gov/adrules/csr/csr.

Missouri Code of State Regulations

Effective Dates

Normal Effective Date

A normal rulemaking is effective no sooner than thirty (30) days after it is published in the *Code*. For example, a rulemaking is published in the March 31 *Code* update. That rulemaking would be effective April 30 (March 31 + 30 days = April 30). Of course, not every rulemaking follows this rule; there are a few exceptions to the rule.

Later Effective Date

An agency promulgating rules could elect to have a later effective date. For example, if an agency wants its rulemaking to be effective on July 1, when the new fiscal year starts, they may make it effective July 1 if July 1 is at least thirty (30) days after publication of the *Code* update in which the rulemaking appears. Let's say the normal thirty- (30-) day effective date is June 30 for this order. Since July 1 is more than thirty (30) days after the publication date, the agency may give its rulemaking the later effective date. In this example, they could make the effective date any day after June 30 but could not make it before June 30.

Those Few Exceptions That Can Have Early Effective Dates

There are a few agencies that, through constitutional or statutory exceptions may have a rulemaking become effective earlier than thirty (30) days after the rulemaking has been published in the *Code*. In these cases, there are very specific exceptions for only certain types or parts of rules (see section 536.021.8., RSMo). These special effective dates are acknowledged and bolded in the order of rulemaking published in the *Missouri Register*.

Missouri Code of State Regulations

Indexes

Code Indexes

The *Code of State Regulations* contains four (4) different indexes. They can be found online at sos.mo.gov/adrules/csr/current/indexes/index.

Changed Rule Number Index

This index gives the original rule number of the rule, the number the rule was changed to, the effective date of the change, and the *Missouri Register* citation in which the rule was changed.

General Index

This index cites rules by agency headings, topics, and descriptions.

Revised Statutes of Missouri Cross-Referenced to *Code of State Regulations*—RSMo to CSR

This index lists statutes numerically that are referred to in the *Code* and cites each rule that refers to the statute.

Revised Statutes of Missouri Cited or Referred to in the *Code of State Regulations*—CSR to RSMo

This index lists rules numerically and the statutes that are referred to in each rule. This is the reverse of the index that is described above.

The Players in Rulemaking

- The Legislature passes statutes which give rulemaking authority to state agencies.
- State agencies promulgate rules based on statutory authority.
- Administrative Rules of the Office of the Secretary of State publishes both the *Missouri Register* and the *Code of State Regulations*. We assist state agencies and the public in understanding the rulemaking process.
- The Joint Committee on Administrative Rules (JCAR) monitors agency rulemakings to make sure that they do not exceed their statutory authority.

How are rules created?

Where do rules come from?

Rules can only be written if a statute authorizes a state agency to write a rule pertaining to a particular subject. There are a few rules that are authorized by the *Missouri Constitution*, but the vast majority of rules exist by statutory authority. *So how does a state agency promulgate a rule?*

How are rules created?

1. An agency writes a rule, based on authority from specific statutes in the *Missouri Revised Statutes*. Once the rule is written by the agency, the remaining required paperwork is compiled. The agency is then ready to file the rulemaking.
2. If an agency is part of the Executive Branch they must prefile with the governor's office to get a letter of approval prior to filing.
3. The next step to create a rule is to file a proposed rule with the Small Business Regulatory Fairness Board, if applicable, the Joint Committee on Administrative Rules (JCAR), and Administrative Rules of the Office of the Secretary of State by email **on the same day**.
4. According to the *Missouri Register* publication schedule, Administrative Rules publishes the proposed rule thirty to forty-five (30–45) days later in the *Missouri Register*. Whether the rulemaking is published at the first or the middle of each month in the *Register* is determined by the filing date of the rulemaking. The timeline calculator available at s1.sos.mo.gov/adrules/datecalc/ is a helpful tool for help with publishing dates.
5. Following publication, there must be a public comment and/or public hearing period that extends a minimum of thirty (30) days **after** the date of publication of the proposed rulemaking in the *Missouri Register*. **The agency** must act on the rulemaking within ninety (90) days following the close of public comment, or the agency may withdraw the rulemaking at anytime.
6. Once the public comment and/or public hearing period is closed, information from the comments and/or public hearing is compiled by the agency and the agency writes the final order of rulemaking for the proposed rulemaking.
7. A copy of the final order of rulemaking for the proposed rulemaking is next **filed** by the agency **only** with the Joint Committee on

How are rules created?

Administrative Rules at the Capitol and the Small Business Regulatory Fairness Board, if applicable by email. (This is required for all agencies, except in some instances for specific rulemakings from these specific departments: the Department of Conservation, the Department of Elementary and Secondary Education, and the Department of Labor and Industrial Relations Commission.)

8. The final order of rulemaking is retained by the Joint Committee on Administrative Rules for a thirty- (30-) day review period. Once the thirty- (30-) day review period is completed, the agency may then, and only then, file the final order of rulemaking packet they received back from JCAR with Administrative Rules by email for publication in the *Missouri Register*. However, the agency must file the order prior to ninety (90) days after the end of the comment period or the rulemaking will become void.
9. At the end of each month, the rules that are published as final orders of rulemaking in the *Missouri Register* are prepared in final form for publication in the update to the *Code of State Regulations* by Administrative Rules.
10. These rules become effective thirty (30) days after the publication date of the update to the *Code of State Regulations*. An agency, at their discretion, may choose a later date. Exceptions to these effective dates are set by statute.
11. Once a rule becomes effective, it has the force and effect of law.
12. Agencies must file a Statement of Actual Cost, if applicable, for public cost after the first full fiscal year.
13. Agencies may amend or rescind existing rules by going through the same process which is outlined in the above steps. However, an agency may only have one (1) rulemaking procedure in place at a time for each rule. The rulemaking must be ordered before it can begin the amendment process again.

Agency Responsibilities

Agency Rulemaking Policy

Any state agency that proposes rules must adopt rulemaking procedures (section 536.016, RSMo). These procedures should determine if a rule is necessary to carry out the purposes of the statute authorizing the rulemaking. This determination should include an assessment of the effectiveness and costs of the rulemaking both to private and public person(s) or entity(ies).

This policy and procedure is an internal (within your agency) document that each agency should permanently file with their rule-making copies.

Agency Responsibilities

Delegation of Authority

Just as your agency has a responsibility to adopt an internal rulemaking policy and keep the same on file within your office(s) (section 536.016, RSMo), you also have the responsibility to furnish our office with the proper delegation of authority, and applicable signatures, for rulemaking authority for your agency.

Please address a cover letter to Administrative Rules, stating to whom authority is delegated for **all phases** of rulemaking within your agency. A Delegation of Authority form is available online at sos.mo.gov/adrules/forms. This delegation of authority will extend from the cover letter to declaration, fiscal note(s), and actual final orders of rulemaking for all types of rules. The letter must also contain an exact verification of signature of the person to whom authority has been delegated. This should be emailed to rules@sos.mo.gov with Delegation in the subject line.

It is the responsibility of our office to allow **only those persons** to whom this authority has been delegated to file any stage of rulemaking. This policy is for the protection of your agency, as well as the Office of the Secretary of State, Administrative Rules.