Volume 20

CHAPTER 1. INTRODUCTION

- § 1:1 The scope and purposes of this volume
- § 1:2 Missouri administrative practice and procedure—The early years
- § 1:3 The modern statutory and judicial framework in Missouri
- § 1:4 The functions of Missouri administrative agencies
- § 1:5 The relationship between substantive law and administrative procedure
- § 1:6 The importance of Missouri administrative practice and procedure

CHAPTER 2. MISSOURI ADMINISTRATIVE AGENCIES AND THE FEDERAL AND MISSOURI CONSTITUTIONS

- § 2:1 General constitutional provisions
- § 2:2 Separation of powers under the Missouri constitution
- § 2:3 Delegation of legislative, judicial, and executive power
- § 2:4 Administrative officers and departments created by the Missouri constitution

CHAPTER 3. THE MISSOURI ADMINISTRATIVE PROCEDURE ACT

- § 3:1 The definition of "agency" and "state agency" under the Act
- § 3:2 The consequences of "agency" and "state agency" status
- § 3:3 Administrative agencies beyond the definitions of "agency" and "state agency"—The exempt agencies
- § 3:4 Practice and procedure in the exempt agencies

CHAPTER 4. MISSOURI ADMINISTRATIVE AGENCIES—EXTERNAL CONTROLS AND INFLUENCES

- § 4:1 The varieties of external controls and influences over Missouri administrative agencies
- § 4:2 The governor
- § 4:3 The general assembly
- § 4:4 The Missouri judiciary

- § 4:5 State auditor
- § 4:6 Direct and indirect controls and influences arising out of federal governmental institutions
- § 4:7 Public controls and influences
- § 4:8 Reports of agency employees to other public officials
- § 4:9 Missouri ethics in government laws

CHAPTER 5. RULEMAKING—INTRODUCTION—DEFINITION

A. INTRODUCTION

- § 5:1 Administrative rulemaking in Missouri
- § 5:2 The sources of rulemaking procedure in Missouri
- § 5:3 Agencies subject to the rulemaking procedures of the Missouri Administrative Procedure Act
- § 5:4 Agencies not subject to the rulemaking procedures of the Missouri Administrative Procedure Act
- §§ 5:5 to 5:9 [Reserved]

B. THE DEFINITION OF RULEMAKING

- § 5:10 The definition of "rule" under the Act
- § 5:11 Legislative and substantive rules
- § 5:12 Interpretative rules
- § 5:13 Statements of policy
- § 5:14 Rules of organization, procedure and practice
- § 5:15 Emergency rules
- § 5:16 [Reserved]

C. STATUTORY EXCLUSIONS FROM THE DEFINITION OF RULE

- § 5:17 The statutory exclusions generally
- § 5:18 Statements concerning internal agency management
- § 5:19 § 536.050
- § 5:20 Intergovernmental, interagency and intraagency communications
- § 5:21 Determinations, decisions or orders in contested cases
- § 5:22 Opinions of the attorney general
- § 5:23 Certain staff manuals, instructions and internal guidelines
- § 5:24 Price specifications for agency goods and services
- § 5:25 Statements concerning the physical care of public facilities and property
- § 5:26 Signs and signals
- § 5:27 Agency refusals to exercise discretionary power

- § 5:28 Agency statements concerning persons in or dealing with certain public institutions
- § 5:29 Agency statements concerning state fairs and exhibitions
- § 5:30 Tax forms and instructions
- § 5:31 The cumulative impact and significance of the statutory exclusions

CHAPTER 6. RULEMAKING—AUTHORITY AND PROCEDURE

A. AGENCY RULEMAKING AUTHORITY

- § 6:1 The varieties and sources of rulemaking authority
- § 6:2 Mandatory rulemaking
- § 6:3 Discretionary rulemaking
- §§ 6:4 to 6:9 [Reserved]

B. RULEMAKING PROCEDURE FOR RULES NOT SUBJECT TO THE REQUIREMENTS OF THE ACT

- § 6:10 Exempt agencies
- § 6:11 Exempt rulemaking
- § 6:12 Constitutional limitations
- § 6:13 Statutory limitations
- § 6:14 Policy constraints and discretionary rulemaking authority
- §§ 6:15 to 6:19 [Reserved]

C. RULEMAKING PROCEDURE FOR RULES SUBJECT TO THE REQUIREMENTS OF THE ACT

1. IN GENERAL

- § 6:20 The general statutory framework
- § 6:21 Notice-and-comment rulemaking
- § 6:22 Mandatory departures from the framework
- § 6:23 Discretionary departures from the framework

2. INITIATION OF RULEMAKING PROCEEDINGS

- § 6:24 Agency initiation
- § 6:25 Public petitions for promulgation, amendment or repeal
- § 6:26 Requirements for public petitions
- § 6:27 Form and content of public petitions
- § 6:28 Agency obligations to respond to public petitions

B. NOTICE OF PROPOSED RULEMAKING

- § 6:29 Notice generally
- § 6:30 The Missouri Register
- § 6:31 Purpose of the Register
- § 6:32 Role of the Secretary of State
- § 6:33 Content of the Register
- § 6:34 Effect of the Register
- § 6:35 Form of the notice of proposed rulemaking
- § 6:36 Content of the notice of proposed rulemaking

4. PUBLIC PARTICIPATION IN RULEMAKING PROCEEDINGS

- § 6:37 Submission of written comments
- § 6:38 Discretionary agency hearings on proposed rules
- § 6:39 Mandatory agency hearings on proposed rules
- § 6:40 Preservation and public record status of written comments and hearing records

5. FINAL RULES

- § 6:41 Rulemaking orders
- § 6:42 Content of rulemaking orders
- § 6:43 Publication and dissemination of final rules generally
- § 6:44 The Missouri Register
- § 6:45 Code of state regulations
- § 6:46 Role of the secretary of state
- § 6:47 Content of the code
- § 6:48 Effect of the code
- § 6:49 Discretionary publication and dissemination
- § 6:50 [Reserved]

6. FISCAL NOTES

- § 6:51 Fiscal notes generally
- § 6:52 Fiscal notes and proposed rules affecting private persons or entities
- § 6:53 Fiscal notes and proposed rules affecting public funds
- § 6:54 Cost overruns and fiscal notes
- § 6:55 Revised fiscal notes
- § 6:56 Consequences of failure to satisfy fiscal note requirements

7. TAKINGS ANALYSES

- § 6:57 Takings analyses generally
- § 6:58 Consequences of failure to satisfy takings analyses requirements

| § 6:59 | Sunset | of the | September | 1. | 1997 | sunset | provision |
|--------|--------|--------|-----------|----|------|--------|-----------|
|--------|--------|--------|-----------|----|------|--------|-----------|

8. THE EMERGENCY RULEMAKING EXCEPTION

- § 6:60 Emergency rulemaking generally
- § 6:61 Circumstances justifying emergency rulemaking
- § 6:62 Limitations on emergency rulemaking
- § 6:63 Duration of emergency rules
- § 6:64 Policy considerations in the exercise of emergency rulemaking authority

9. CONSTRAINTS UPON THE CONDUCT OF PERSONS WITHIN AND WITHOUT THE AGENCY IN RULEMAKING PROCEEDINGS

- § 6:65 Impartiality
- § 6:66 Separation of functions
- § 6:67 Ex parte contacts

10. SMALL BUSINESS IMPACT ANALYSES

- § 6:68 Small business impact analyses generally
- § 6:69 Small business impact statements and consequences of failure to satisfy requirements
- § 6:70 Small business regulatory fairness board

CHAPTER 7. RULEMAKING—REVIEW AND OVERSIGHT

A. REVIEW OF AGENCY RULEMAKING IN THE ADMINISTRATIVE HEARING COMMISSION

- § 7:1 The administrative hearing commission
- § 7:2 Actions for determination of the validity or applicability of rules
- § 7:3 State Tax Commission v. Administrative Hearing Commission
- § 7:4 The legitimacy of commission determinations concerning agency rules after State Tax Commission v. Administrative Hearing Commission
- §§ 7:5 to 7:19 [Reserved]

B. JUDICIAL REVIEW OF AGENCY RULEMAKING

- § 7:20 Declaratory judgment action
- § 7:21 Declaratory judgment actions—Reasonable fees and expenses
- § 7:22 Declaratory judgment action—Exhaustion of administrative remedies
- § 7:23 Venue

Administrative Practice and Procedure

- § 7:24 Award of attorney's fees when state agency bases actions on statement of general applicability not promulgated in accordance with rulemaking procedures, or promulgates a rule as an emergency rule when it should not have
- § 7:25 Scope of judicial review concerning agency rules
- § 7:26 Other forms of judicial proceedings for the determination of the validity of agency rules
- §§ 7:27 to 7:39 [Reserved]

C. OTHER FORMS OF REVIEW AND OVERSIGHT OF AGENCY RULEMAKING

- § 7:40 Review and oversight outside the judicial process
- § 7:41 Agency rulings and advisory opinions
- § 7:42 The committee on administrative rules
- § 7:43 The general assembly
- § 7:44 The governor
- § 7:45 The attorney general
- § 7:46 Commissioner of administration
- § 7:47 State auditor
- §§ 7:48 to 7:59 [Reserved]

D. SUSPENSION OR TERMINATION OF RULES AS A CONSEQUENCE OF REVIEW

- § 7:60 Circumstances resulting in suspension or termination
- § 7:61 Publication of notice in the Missouri Register
- § 7:62 Form and content of the notice
- § 7:63 Effect of suspension or termination

CHAPTER 8. ADJUDICATION—INTRODUCTION—DEFINITION

A. CONTESTED CASES GENERALLY

- § 8:1 Adjudication of contested cases in Missouri
- § 8:2 The sources of procedure for contested cases
- § 8:3 Agencies subject to the contested case procedures of the MAPA
- § 8:4 Agencies not subject to the contested case procedures of the MAPA

B. THE DEFINITION OF "CONTESTED CASE"

- § 8:5 The definition of "contested case" under the MAPA
- § 8:6 Effect of agency proceeding being a contested case instead of a noncontested case

§ 8:7 The contrast between adjudication of a contested case and rulemaking

CHAPTER 9. ADJUDICATION— PRELIMINARY PROCEDURE

A. INITIATION OF THE CONTESTED CASE

- § 9:1 Initiation by an agency
- § 9:2 Initiation other than by an agency
- § 9:3 Pleadings
- § 9:4 Parties
- § 9:5 Intervention
- §§ 9:6 to 9:9 [Reserved]

B. NOTICE OF INSTITUTION OF A CONTESTED CASE

- § 9:10 Notice generally
- § 9:11 Content and form of notice
- § 9:12 Service of notice
- § 9:13 Service of notice to representative members of a class
- § 9:14 Notice by publication
- §§ 9:15 to 9:19 [Reserved]

C. NOTICE OF HEARING

- § 9:20 Notice of hearing generally
- § 9:21 Content and form of notice of hearing
- § 9:22 Service of notice of hearing
- §§ 9:23 to 9:29 [Reserved]

D. INFORMAL DISPOSITION OF A CONTESTED CASE

- § 9:30 Informal disposition generally
- § 9:31 Stipulations
- § 9:32 Consent order
- § 9:33 Default
- § 9:34 Agreed settlement
- § 9:35 Waiver of procedural requirements

CHAPTER 10. ADJUDICATION—THE HEARING

A. THE DECISIONMAKER IN CONTESTED CASES

§ 10:1 Presiding officials generally

Administrative Practice and Procedure

- § 10:2 Conduct of the hearing
- § 10:3 Contempt proceedings in circuit court
- § 10:4 Impartiality
- § 10:5 Separation of functions
- § 10:6 Limitations on ex parte contacts
- § 10:7 Duties with respect to oral argument, written briefs, and the record
- § 10:8 Duty of reasonable speed
- §§ 10:9 to 10:19 [Reserved]

B. THE ADMINISTRATIVE HEARING COMMISSION AS DECISIONMAKER

- § 10:20 Scope of the commission's authority
- § 10:21 Contested cases subject to commission determination
- § 10:22 Practice and procedure before the commission
- §§ 10:23 to 10:29 [Reserved]

C. GENERAL MATTERS CONCERNING THE HEARING IN A CONTESTED CASE

- § 10:30 Location of the hearing
- § 10:31 Right to counsel
- § 10:32 Attorney's fees, costs and other reasonable fees and expenses
- § 10:33 Discovery
- §§ 10:34 to 10:39 [Reserved]

D. SUBPOENAS IN CONTESTED CASES

- § 10:40 Agency subpoena powers
- § 10:41 Agency exercise of subpoena powers
- § 10:42 Delegation of subpoena powers within an agency
- § 10:43 Party exercise of subpoena powers
- § 10:44 Subpoenas ad testificandum and subpoenas duces tecum
- § 10:45 Content of subpoenas
- § 10:46 Service of subpoenas
- § 10:47 Enforcement of subpoenas
- §§ 10:48 to 10:59 [Reserved]

E. EVIDENCE IN CONTESTED CASES

- § 10:60 Rules of evidence
- § 10:61 Witnesses and testimony
- § 10:62 Cross-examination
- § 10:63 Exhibits
- § 10:64 Agency records and documents
- § 10:65 Business records

- § 10:66 Copies
- § 10:67 Studies and surveys
- § 10:68 Affidavits
- § 10:69 Depositions
- § 10:70 Official notice
- § 10:71 Objections
- § 10:72 Presumptions
- § 10:73 Burden of proof
- § 10:74 Stipulations

CHAPTER 11. ADJUDICATION—THE RECORD, DECISION, AND ORDER

A. THE RECORD IN A CONTESTED CASE

- § 11:1 Preparation and preservation
- § 11:2 Transcription
- § 11:3 Content
- § 11:4 Exclusivity of the record
- §§ 11:5 to 11:9 [Reserved]

B. THE DECISION AND ORDER IN A CONTESTED CASE

- § 11:10 Form and content
- § 11:11 Findings of fact
- § 11:12 Conclusions of Law
- § 11:13 Notice of decision
- § 11:14 Access to the decision, order, and findings
- § 11:15 Rehearing
- § 11:16 Waiver of administrative penalties and fines upon small business

Volume 20A

CHAPTER 12. ADJUDICATION—JUDICIAL REVIEW

A. IN GENERAL

- § 12:1 Judicial review of a contested case
- § 12:2 Judicial review of a noncontested case
- §§ 12:3 to 12:9 [Reserved]

B. STATUS OF DECISIONS OR ORDERS IN CONTESTED CASES PENDING JUDICIAL REVIEW

- § 12:10 Status absent a stay of effectiveness
- § 12:11 Stays of effectiveness granted by an agency
- § 12:12 Stays of effectiveness granted by a court
- §§ 12:13 to 12:19 [Reserved]

C. PETITIONS FOR REVIEW IN CIRCUIT COURT

- § 12:20 Petitions generally
- § 12:21 Form and content
- § 12:22 Venue
- § 12:23 Service of the petition for judicial review
- §§ 12:24 to 12:29 [Reserved]

D. RECORD ON JUDICIAL REVIEW

- § 12:30 Filing the record
- § 12:31 Form and content of record
- § 12:32 Written stipulations
- § 12:33 Agreed statement of the case
- § 12:34 Complete transcript
- § 12:35 Decision, order, and findings
- § 12:36 Certification of the record
- § 12:37 Corrections or additions to the record
- § 12:38 Exclusivity of the record
- § 12:39 [Reserved]

E. SCOPE OF JUDICIAL REVIEW

- § 12:40 Constitutional principles
- § 12:41 Scope of judicial review generally
- § 12:42 The initial reviewing court's judgment
- § 12:43 Further appellate review

F. GROUNDS FOR REVIEW EXCLUSIVELY ON THE RECORD

- § 12:44 In violation of constitutional provisions
- § 12:45 In excess of statutory authority or jurisdiction
- § 12:46 Unsupported by competent and substantial evidence
- § 12:47 Otherwise unauthorized by law
- § 12:48 Arbitrary, capricious, or unreasonable
- § 12:49 Abuse of discretion

G. CIRCUMSTANCES ALLOWING PRESENTATION OF ADDITIONAL EVIDENCE TO REVIEWING COURT

- § 12:50 Application of law to facts involving no administrative discretion
- § 12:51 Unlawful procedure or without a fair trial
- § 12:52 Unreasonable delay by the agency
- §§ 12:53 to 12:59 [Reserved]

H. JUDICIAL REVIEW OF AN AGENCY'S CHOICE OF THE PROCEDURAL MEANS FOR THE FORMULATION OF POLICY

- § 12:60 Judicial review when an agency proceeds by adjudication rather than by rulemaking
- § 12:61 Judicial review when an agency proceeds by rulemaking rather than by adjudication

CHAPTER 13. LIMITATIONS ON JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

- § 13:1 Constraints in obtaining judicial review
- § 13:2 Preclusions of judicial review
- § 13:3 Standing
- § 13:4 Exhaustion of administrative remedies
- § 13:5 Ripeness
- § 13:6 Primary jurisdiction
- § 13:7 Sovereign and official immunity
- § 13:8 Res judicata and collateral estoppel
- § 13:9 Estoppel
- § 13:10 Laches
- § 13:11 Statute of limitations

CHAPTER 14. OPEN MEETINGS—THE "SUNSHINE" LAW

- § 14:1 The Missouri open meetings law
- § 14:2 Scope of the open meetings law
- § 14:3 Statement of public policy
- § 14:4 "Public governmental body" defined
- § 14:5 "Quasi-public governmental body" defined
- § 14:6 "Public meeting" defined
- § 14:7 Notice of the public meeting
- § 14:8 The conduct of the public meeting
- § 14:9 The "closed meeting" exceptions

- § 14:10 Enforcement
- § 14:11 Remedies and penalties

CHAPTER 15. FREEDOM OF INFORMATION—ACCESS TO DOCUMENTS

- § 15:1 The Missouri open records laws
- § 15:2 Scope of the open records laws
- § 15:3 Statement of public policy
- § 15:4 "Public governmental body" defined
- § 15:5 "Quasi-public governmental body" defined
- § 15:6 "Public record" defined
- § 15:7 The custodian of records and requests for public records
- § 15:8 Fees for access to and copies of public records
- § 15:9 The "closed record" exceptions
- § 15:10 Arrest records
- § 15:11 "911" telephone reports
- § 15:12 Enforcement
- § 15:13 Remedies and penalties

APPENDICES

- Appendix A. The Missouri Administrative Procedure Act
- Appendix B. Principal Statutes Pertaining to Open Meetings and Freedom of Information
- Appendix C. Selected Provisions of the Constitution of Missouri
- Appendix D. Selected Supreme Court Rules

Table of Laws and Rules

Table of Cases

Index