





## STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

100 NORTH UNION STREET, SUITE 870  
MONTGOMERY, ALABAMA 36104

### NOTICE OF INTENDED ACTION

AGENCY NAME: STATE HEALTH PLANNING AND DEVELOPMENT AGENCY  
(Certificate of Need Review Board)

RULE NO. & TITLE: 410-1-7-.02 Reviewability Determination Request

#### INTENDED ACTION:

The State Health Planning and Development Agency and the Certificate of Need Review Board propose to amend the above-styled section of the *Alabama Certificate of Need Program Rules and Regulations*.

#### SUBSTANCE OF PROPOSED ACTION:

This amendment clarifies that all written requests submitted under this rule must be filed electronically in accordance with Rule 410-1-3-.09 and provides for the electronic payment of the required filing fee. The amendment also requires the applicant to submit its request under oath and requires service of all filings in opposition to the request on the applicant.

#### TIME, PLACE, MANNER OF PRESENTING VIEWS:

In response to this Proposed Rule, all interested persons are invited to submit data, views, comments and/or arguments, orally or in writing. Any and all such data, comments, arguments and/or requests to orally address the Certificate of Need Review Board shall be made in writing on or before August 4, 2016, and shall be made to:

Nicole Horn, Executive Secretary  
State Health Planning and Development Agency  
P. O. Box 303025  
Montgomery, Alabama 36130-3025

On August 17, 2016, at 10:00 a.m., the Certificate of Need Review Board shall conduct a public hearing in the State Capitol, Capitol Auditorium, 600 Dexter Avenue, Montgomery, Alabama, at which time it shall consider the Proposed Amendment, along with all written and oral submissions respecting the Proposed Amendment. Only those interested persons who have made timely written requests will be afforded the opportunity to speak.

Copies of the proposed changes are available for review at 100 North Union Street, RSA Union Building, Suite 870, Montgomery, Alabama. Phone (334) 242-4103 or visit the office Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding State holidays.

MAILING ADDRESS: P.O. BOX 303025, MONTGOMERY, ALABAMA 36130-3025  
PHONE: (334) 242-4103 FAX: (334) 242-4113

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

August 4, 2016

CONTACT PERSON AT AGENCY:

Nicole Horn  
100 North Union Street  
RSA Union, STE 870  
Montgomery, AL 36104  
(334) 242-4103

  
Alva M. Lambert  
Alva M. Lambert, Executive Director

**410-1-7-.02 Reviewability Determination Request**

(1) Any person may request for informational purposes only a determination as to the current reviewability of an anticipated project or determination of exemption for replacement equipment. Such request shall be submitted pursuant to Rule 410-1-3-.09 in writing disclosing full factual information as may be more specifically identified on the SHPDA website, supplemented by any additional information or documentation which the Executive Director may deem necessary. Such request shall be attested by an officer, partner or authorized agent of the company having knowledge of the facts contained therein, utilizing the following form:

Affirmation of Requesting Party:

The undersigned, being first duly sworn, hereby make oath or affirm that he/she is [include position with entity requesting the determination], has knowledge of the facts in this request, and to the best of his/her/their information, knowledge and belief, such facts are true and correct.

Affiant \_\_\_\_\_ (SEAL)  
SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

- (2) Upon a request being deemed complete, the Executive Director shall publish notice thereof on the Agency's web site and provide ~~written~~ notice to the general distribution list maintained by the Agency and, for informational purposes, to the CON Board as part of its monthly Board agenda.
- (3) Within thirty (30) business days of publication of the request pursuant to (2) above, any affected person may file comments with the Agency pursuant to Rule 410-1-3-.09 ~~written~~ ~~comments~~ regarding the issuance of the requested letter of non-reviewability. In addition, any affected person opposing such a determination of non-reviewability may seek a declaratory ruling by filing a petition with the CON Board, which request shall be governed by the provisions of Rule 410-1-9-.01. A copy of any such filings shall be served on the person requesting the reviewability determination.
- (4) At any time following the thirty (30) day period, the Executive Director, giving due consideration to any comments received, shall respond to the request. Such response shall be rendered within forty-five (45) days of the request, unless the Executive Director finds that additional time is needed to obtain additional information or to evaluate ~~written~~ comments filed in opposition of the request. A copy of the Agency's determination shall be included in the SHPDA Review and, for informational purposes, to the CON Board, as part of the monthly Board agenda.

- (5) The party seeking the reviewability determination or other affected person may challenge the Agency's reviewability determination by seeking a declaratory ruling from the CON Board, which shall be governed by Rule 410-1-9-.01.
- (6) Should the law or regulations change and the anticipated project become subject to review, any determination furnished under this section shall become null and void.
- (7) Except as provided below, all reviewability requests shall be accompanied by a fee of \$1,000. A request submitted under this rule addressing solely the exemption for the purchase of equipment shall be accompanied by a fee as specified in ALA. CODE § 22-21-265-(b)(4). Reviewability determinations associated with a change of ownerships shall be governed by Rule 410-1-7-.04. Rural hospitals shall be exempt from the payment of fees under this chapter to the extent provided in ALA. CODE § 22-21-265 (1975, as amended).
- (8) All required filing fees must be submitted to the State Agency via overnight mail and marked in such a way as to clearly identify the fee with the electronic submission; or the fee may be submitted electronically via the payment portal available through the State Agency's website.

Statutory Authority: §§ 22-21-263, 265, 275, Code of Alabama, 1975.

History: Amended: Filed June 12, 1997; effective July 17, 1997; Amended: Filed October 30, 2007; effective December 4, 2007; Amended: Filed March 26, 2012; effective: April 30, 2012.  
Amended: Filed \_\_\_\_\_; effective: \_\_\_\_\_.