Title 2: Agriculture and Commerce
Part 701: Rules of the Mississippi Land, Water & Timber Resources Board

Mississippi Development Authority
Financial Resources Division
Land, Water and Timber Resources Program
Post Office Box 849
Jackson, Mississippi 39205
(601)359-3552
or
Mississippi Department of Agriculture & Commerce
Marketing Division
Post Office Box 1609
Jackson, Mississippi 39215-1609
(601)359-1100

Chapter	Title
1	Program Regulations
2	Public Records Request
3	Procedure for Oral Proceedings on Rule-Making
4	Procedure for Requesting Declaratory Opinions

Title 2: Agriculture and Commerce
Part 701: Rules of the Mississippi Land, Water & Timber Resources Board

Chapter 1—Program Regulations

100 Pursuant to the Mississippi Land, Water and Timber Resources Act, Miss. *Code Ann. §*§69-46-1 *et seq.*, any and all subsequent amendments made thereafter, and all such other points of law that may be applicable, the Mississippi Land, Water and Timber Resources Board promulgates the following regulations, in accordance with the Mississippi Administrative Procedures Law, as may be necessary to further the provisions of the Act.
(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

101 Definitions and Terms:

1. "Act" means the Mississippi Land, Water and Timber Resources Act, *Miss. Code Ann.* §§69-46-1 *et seq.*
2. "Agribusiness" means any industrial, manufacturing, research and development, processing or value-added enterprise located in the State and related to agriculture, aquaculture, and/or horticulture.
3. "Board" means the Mississippi Land, Water and Timber Resources Board.
4. "Department" means the Mississippi Department of Agriculture and Commerce.
5. "MDA" means the Mississippi Development Authority.
6. "Public Records Act" means the Mississippi Public Records Act of 1983, *Miss. Code Ann. §*§25-61-1 *et seq.*
7. "Resources Program" means the Mississippi Land, Water and Timber Resources Program as set forth in the Act.
8. "State" means the State of Mississippi.
9. "Value added" means a change in the physical state or form of the product.
10. "Mississippi natural resources" include sun, water, wind, crops, timber, livestock, livestock waste, wood or other forest products or waste therefrom, non-fossil fuels, biomass and geothermal resources.
11. "Alternative energy" means energy derived from Mississippi natural resources.
12. "Working capital" means funds utilized by a for-profit business to pay current operating expenses of the business.

(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

<u>Purpose of Program</u>

102 The Resources Program is a finance program designed to stimulate growth of the agricultural industry by assisting the Mississippi agricultural industry in the development, marketing**,** manufacture, production and distribution of agricultural products.
(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

Board

103.01 The Act created the Board, which is composed of the following members:

1. The Executive Director of the MDA, or his designee, who shall serve as Co-Chairman of the Board;
2. The Commissioner of the Department, or his designee, who shall serve as Co-Chairman of the Board;
3. The Chairman of the Senate Agriculture Committee, or a member of the Senate Agriculture Committee designated by the chairman, as a non-voting member;
4. The Chairman of the House of Representatives Agriculture Committee, or a member of the House of Representatives Agriculture Committee designated by the chairman, as a nonvoting member;
5. The Chairman of the Senate Forestry Committee, or a member of the Senate Forestry Committee designated by the chairman, as a nonvoting member;
6. The President of the Mississippi Farm Bureau Federation, or his designee;
7. The Director of the Cooperative Extension Service at Mississippi State University, or his designee;
8. The Executive Director of the Agribusiness and Natural Resource Development Center at Alcorn State University, or his designee;
9. The Director of the Agricultural Finance Division of MDA, or his designee;
10. The Director of the Agriculture Marketing Division of the Department, or his designee;
11. The Executive Director of the Mississippi Forestry Commission, or his designee; and
12. Three individuals, one from each Supreme Court district; appointed by the Governor who are active producers of Mississippi land, water or timber commodities.

(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

103.02 The Board shall have the following powers and duties:

1. To develop marketing plans and opportunities for independent farmers in Mississippi;
2. To encourage the commercialization of new agricultural technology businesses;
3. To initiate the development of processing facilities for Mississippi agricultural commodities;
4. To initiate the development of Mississippi wholesale distribution businesses for agricultural inputs and products;
5. To promote the development of institutional and specialty markets for Mississippi agricultural products;
6. To encourage additional research for new agricultural product development;
7. To develop a working relationship with the state offices of the United States Department of Agriculture as may be appropriate for the promotion and development of agriculture in Mississippi;

8. To promote the rural quality of life in the State through such programs as 4-H, Future Farmers of America and agricultural education;
9. To encourage, promote and initiate the development of alternative energy strategies, applied research technologies and commercialization enterprises that focus on Mississippi natural resources, including, but not limited to, agriculture, timber and poultry products and byproducts; and
10. To expend funds from the Mississippi Land, Water and Timber Resources Fund, established by the Act, to carry out its powers and duties under the Act in the most practical and efficient manner designed to review, evaluate and encourage successful projects which demonstrate the potential to offer the agricultural community an enhanced profitability for the state's farmers.

(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

103.03 The Board shall meet at least once each calendar quarter by call of the co-chairmen at the State Capitol in Jackson, Mississippi.
(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

103.04 A majority of the members shall constitute a quorum. An affirmative vote of a majority of the voting members present is required in the adoption of any actions taken by the Board.
(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

103.05 The Board shall file an annual report with the Governor, Secretary of Senate and the Clerk of the House of Representatives not later than December 1 of each year, with recommendations for any legislation necessary to accomplish the purposes of the Act.
(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

<u>Criteria For Projects</u>

104.01 Projects are divided into two (2) categories: 1. Land, Water & Timber Projects; and 2. Land, Water & Timber—Alternative Energy Projects. The criteria for each category are set forth below.

1. <u>LAND, WATER & TIMBER PROJECT CRITERIA</u>
   In order to qualify to receive financial assistance under the Resources Program, a Land, Water & Timber project must meet at least one of the following criteria:
   a. Promote the marketability of Mississippi agricultural projects;
   b. Assist in the development of marketing plans and business opportunities for independent farmers in the State;

c. Encourage the commercialization of new agricultural technology businesses;
d. Assist in the research and development of new agribusiness products;
e. Initiate the development of a processing facility for Mississippi agricultural commodities;
f. Initiate the development of Mississippi wholesale distribution businesses for agricultural inputs and products;
g. Promote the development of institutional and specialty markets for Mississippi agriculture products;
h. Promote farm and agricultural education; or
i. Encourage additional research for new agricultural product developments.

2. LAND, WATER & TIMBER—ALTERNATIVE ENERGY PROJECT CRITERIA
In order to qualify to receive financial assistance under the Resources Program, a Land, Water & Timber—Alternative Energy Project must meet at least one of the following criteria:
   a. Alternative energy projects utilizing agriculture wastes, byproducts or commodities as a fuel source;
   b. Alternative energy applications utilizing Mississippi natural resources to lower expenses, provide a more sustainable source of energy, or displace traditional energy sources for residences, small businesses and agribusiness;
3. Research toward the development of alternative energy strategies or technologies using Mississippi natural resources, if such research is anticipated to lead directly to commercialization for the benefit of agribusiness;
4. Education/demonstration efforts geared toward the utilization of Mississippi natural resources in alternative energy strategies and technologies for the benefit of agribusiness; or
5. Direct commercialization of alternative energy technologies utilizing Mississippi natural resources for the benefit of agribusiness.

(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

104.02 The project must offer viability for success and commercialization with the necessary experience and managerial expertise to justify the investment requested. Projects should create employment opportunities. As a condition of approval, the Board may require the applicant to provide security and/or equity into the project.

(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

104.03 Funds may NOT be used for the following purposes:

1. to acquire land;
2. to pay off any existing debt for loan consolidation purposes;
3. to finance acquisition, construction, improvement, or operation of real property which is primarily for sale or investment; or
4. to provide or free funds for speculation in any kind of property or as a loan to owners.

(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

104.04 Grant funds may NOT be used to fund working capital.
(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

Application Process

105.01 Submission of Application.

Three (3) copies of Resources Program Application available from MDA or the Department must be submitted to either MDA or the Department at the address listed in Section 108 herein. Applicants may be required to provide financial information, both business and personal, and any other information directly or indirectly related to their project, including but not limited to historical data (i.e. bankruptcy, judgments, etc.). Upon receipt of the completed application, the Screening Committee will review the project.

(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

105.02 Screening Committee Review.

1. Each project will be presented to and reviewed by a Screening Committee consisting of the Co-Chairmen of the Board and three (3) members of the Board appointed by the Co-Chairmen of the Board**.** The Screening Committee will consider whether the project qualifies under the Act, meets the criteria of the Resources Program and is a beneficial and an effective allocation of Resources Program funds. Following a review of the application and any supporting documentation, the Screening Committee will determine by an affirmative vote of a majority of the committee members whether a project will be recommended to the Full Board. A majority of the committee members shall constitute a quorum.
2. The Screening Committee will notify an applicant of the Committee's action. The action of the Committee is considered final.

(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

105.03 Board Consideration.

Upon the recommendation of the Screening Committee, a project will be submitted to the Board for consideration. The applicant will be afforded the opportunity to make a formal presentation to the Board. If approved by the Board, the Board will establish the amount and terms of assistance to be provided and will notify the applicant of the Board's decision. The Board may approve the application in whole or in part or with modifications.

(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

Program Funding

106.01 The Board may provide funds to public entities and private entities through loans, grants, contracts and any other manner the Board determines appropriate for the purposes of carrying out the provisions of the Act.
(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

106.02 Due to the availability of a limited supply of funds, every qualifying project will not be approved or receive funding. Approved projects may be funded in whole or in part.
(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

106.03 Upon approval of a project, an agreement will be executed by and between the Board and each entity receiving assistance under the Resources Program. All closing documents must be fully executed prior to any disbursement of funds. MDA and the Board's attorney will prepare the necessary documents and allocate funding as directed by the Board for each project. Funds will be disbursed on a reimbursement or a services-rendered basis. Request for funds must be submitted on forms of requisition, available from MDA. Requisitions forms must be submitted in order to receive funds. The forms will be submitted to the Finance Committee for consideration and action.
(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

106.04 All proceeds of the disbursements must be utilized for the purpose(s) approved by the Board. The disbursement(s) shall be administered by and through MDA.
(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

106.05 In the event of default under such agreement, the Board may seek repayment to the State of any loan, grant or other contract under the Resources Program or pursue any other remedy available at law or in equity.
(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

106.06 The Board, in its discretion, may temporarily waive any requirement of these regulations to the extent that the result of such waiver is to promote the public purpose and intent of the Act and is not prohibited by state law.

(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

Program Information

107 To obtain a program application or to request additional information with respect to the Resources Program, contact:

Mississippi Development Authority
Financial Resources Division
Land, Water and Timber Resources Program
Post Office Box 849
Jackson, Mississippi 39205
(601) 359-3552
or
Mississippi Department of Agriculture & Commerce
Marketing Division
Post Office Box 1609
Jackson, Mississippi 39215-1609
(601) 359-1100

(Adopted May 2004.)

Source: *Miss. Code Ann*. §69-46-5 (Rev. 2002).

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CHAPTER 02- Public Records Request

Public Records Procedure

100 To ensure the orderly implementation of the Public Records Act (hereinafter "the Act"), the Board establishes the following procedure.

100.01. Schedule of Fees.

a. All applicable fees shall be collected by the Board in advance of complying with any request for public records. Pursuant to the Act, the Board establishes the following fees to reimburse the Board for cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records. Fees are subject to change.

i. $10.00 per hour per person for searching, reviewing and/or duplicating public records. Any part of an hour spent in such activities shall be charged at the full hourly rate.

ii. $0.50 per page for each copy. Copies of pages printed on both sides (front and back) shall be considered as two (2) pages for copy charge purposes.

iii. $5.00 packing and handling fee shall be charged on all requests for copies of public records to be shipped or mailed.

iv. Mailing costs shall be calculated at the applicable rate for each such mailing. If a 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 or entity requesting such public records.

b. All fees charged for searching, reviewing, duplicating or mailing shall be paid prior to the performance of any such searching, reviewing, duplicating or mailing by the Board; provided however, if actual cost exceeds preliminary charges, the additional cost shall be paid by the person requesting such records prior to the release of the records.

100.02. Procedures.

a. In the interest of implementing the terms and conditions of the Act, and to prevent the unnecessary disruption to the orderly operations of the Board, the Board will accept written requests for records which are signed by the person requesting the records. All requests shall be directed to: Public Records Officer, Mississippi Land, Water and Timber Resources Program, P.O. Box 1609, Jackson, MS 39205

b. No person requesting public records shall be permitted to review Board files; however, copies of records requested, within limitations imposed by the Act and this regulation, will be furnished such person.

Source: *Miss. Code Ann.* §25-61-1 *et seq.*

100.03. Availability of Records.

a. The availability of all records in the possession of the Board shall be subject to the following limitations:
   i. Any public record specifically declared to be confidential, privileged or exempt by the Act, or any constitutional or statutory law or decision of a court of this state or the United States shall be exempt from the provisions of the Act.
   ii. Any records furnished to the Board which contains trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction until forty-five (45) days following written notice from the Board to the person or entity furnishing such records advising that a request has been received for copies of such documents. The notice shall contain a listing of specific documents requested and the name and address of the person requesting such documents or records. Notices shall be mailed certified mail return receipt requested. At the end of the forty-five (45) day notice period, copies of all records listed in said notice shall be released to the person requesting such records unless the person or entity furnishing such records shall have obtained a court order protecting such records as confidential and exempting such records from the provisions of the Act.
   iii. Personnel records and applications for employment or respecting admission to any educational agency or institution in the possession of the Board, except those which may be released to the person who made the application or released upon the prior written consent of the person who made the application, shall be exempt from the provisions of the Act.
   iv. Test questions and answers in the possession of the Board shall be exempt from the provisions of the Act.
   v. Records which represent and constitute the work product of any attorney, district attorney or county prosecuting attorney representing the Board and which are related to litigation made by or against the Board or in anticipation of prospective litigation, including all communications between such attorney made in the course of an attorney-client relationship shall be exempt from the provisions of the Act.
   vi. Records in possession of the Board, which would disclose information about a person's or entity's, tax payment or status shall be exempt from the provisions of the Act.
   vii. Information or records in the possession of the Board which concerns the sale or purchase of real or personal property for public purposes shall be exempt from the provisions of the Act, prior to public announcement of the purchase or sale, where the release of such records could possibly have a detrimental effect on such sale or purchase.
   viii. Records in the possession of the Board which are not otherwise protected by law, that (a) are compiled in the process of detecting and investigating any unlawful activity or alleged unlawful activity, disclosure of which would harm such investigation; (b) would reveal the identify or informants; (c) would prematurely release information that would impede the Board's enforcement,

investigation or detection efforts in such proceedings; (d) would disclose investigatory techniques; (e) would deprive a person of a right to a fair trial or impartial adjudication; (f) would endanger the life or safety of any Board member or personnel; (g) are matters pertaining to quality control or PEER review activities, shall be exempt from the Act.

ix. Applications for licensure or test questions that are to be used in future license examinations in the possession of the Board, except that which may be released to the person who made the application or with the prior written consent of the person who made the application, shall be exempt from the provisions of the Act.

x. Commercial and financial information or records of a proprietary nature required to be submitted to the Board by a firm, business, partnership, association, corporation, individual or other like entity, shall be exempt from the Act.

xi. Records in the possession of the Board as defined by Section 2(b) of the Act, which are not otherwise protected by law, that are compiled by reason of inspection or investigation of specific facilities, organizations, or devices pursuant to any law requiring such inspections or investigations to determine, insure, or enforce compliance with such law, shall be exempt from the provisions of the Act.

xii. All records in the possession of the Board not specifically exempt as a public record by the Act, or this Regulation, shall be made available upon written request within seven (7) working days from the date of receipt of said request. All requests must include a specific description, identity and name of the records requested. If the Board is unable to produce a public record by the seventh working day after the request is made, the Board must provide a written explanation to the requestor stating that the record requested will be produced, unless exempt by law, and specifying with particularity why the records cannot be produced within the seven-day period. Unless there is mutual agreement of the requestor and the Board, in no event shall the date for the Board's production of the requested records be any later than fourteen (14) working days from the receipt by the Board of the original request. If the requestor and the Board agree, a response period of longer than fourteen (14) working days from the receipt of the request shall be allowed. If the request is denied, the Board shall notify the requestor in writing that the request is denied and provide the specific reason or exemption relied upon by the Board for the denial.

b. All requirements for release of records imposed by the Act and this regulation shall have been fully satisfied before any such records are released.

(Adopted May 2004; amended October 13, 2008; amended July 2010.)

Source: *Miss. Code Ann*. §25-61-1 *et seq.*

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CHAPTER 03- Procedure for Oral Proceedings on Rule-Making

Scope

100 Rules 100-112 are promulgated pursuant to *Mississippi Code Ann.* §25-43-3.104(2)(d) of the Administrative Procedures Law, and apply to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and amendments to rules before the Board pursuant to §25-43-3.104.
(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

When Oral Proceedings will be Scheduled on Proposed Rules

101 The Board will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, an agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule.
(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

Request Format

102 Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the Board and signed by the requestor(s).
(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

Notification of Oral Proceeding

103 The date, time and place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.
(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

Presiding Officer

104 Either Co-Chairman or his designee, who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.
(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

Public Presentations and Participation

105 At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.
(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

106 Persons wishing to make oral presentations at such a proceeding shall notify the Board at least one business day prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not previously contacted the Board.
(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

107 At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.
(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

108 The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
(Adopted June 23, 2005.)

109 Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.
(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

110 There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the partisan's time where the orderly conduct of the proceeding so requires.

(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

Conduct of Oral Proceeding

111 Presiding officer. The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall (a) call the proceeding to order; (b) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the Board for the proposed rule; (c) call on those individuals who have contacted the Board about speaking on or against the proposed rule; (d) allow for rebuttal statements following all participants' comments; (e) adjourn the proceeding.

(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

112 Questions. The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

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CHAPTER 04- Procedure for Requesting Declaratory Opinions

Scope of Rules

100 This chapter sets forth the Mississippi Land, Water and Timber Resources Board's, hereinafter "Board," rules governing the form and content of requests for declaratory opinions, and the Board's procedures regarding the requests, as required by *Mississippi Code Ann.* § 25-43-2.103. These rules are intended to supplement and be read in conjunction with the provisions of the Mississippi Administrative Procedures Law, which may contain additional information regarding the issuance of declaratory opinions. In the event of any conflict between these rules and the Mississippi Administrative Procedures Law, the latter shall govern.

(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

Persons Who May Request Declaratory Opinions

101 Any person with a substantial interest in the subject 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 laws 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.

(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

Subjects That May Be Addressed In Declaratory Opinions

102 The Board will issue declaratory opinions regarding the applicability to specified facts of: (1) a statute administered or enforceable by the Board or (2) a rule promulgated by the Board. The Board will not issue a declaratory opinion regarding a statute or rule that is outside the primary jurisdiction of the Board.

(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

Circumstances In which Declaratory Opinions Will Not Be Issued

103 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 concerning the question presented;
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 an 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 required by these rules or the requestor failed to follow the procedure set forth in these rules;
6. the request seeks to resolve issues that have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the statute 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 that 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. no clear answer is determinable;
11. the question presented by the request involves the application of a criminal statute or a set of facts that may constitute a crime;
12. the answer to the question presented would require the disclosure of information that is privileged or otherwise protected by law from disclosure;
13. the question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's opinion;
14. a similar request is pending before this Board or any other 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 interests 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.

(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

<u>Written Request Required</u>

104 Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the Board.
(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

Where to Send Requests

105 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. Oral and telephone requests and email requests will not be accepted for official opinions.
(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

Name, Address and Signature of Requestor

106 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.
(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

Question Presented

107 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.

(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

Time for Board's Response.

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

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

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

109 The forty-five (45) day period shall begin running on the first State of Mississippi business day on or after the request is received by the Board, whichever is sooner.
(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

Opinion Not Final for Sixty Days

110 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 that 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.
(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

Notice by Board to Third Parties

111 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.
(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

Public Availability of Requests and Declaratory Opinions

112 Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Board's public records request procedure. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests that contain information that is confidential or exempt from

disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).

Effect of a Declaratory Opinion

113 The Board will not pursue any civil or criminal or administrative action against a person who is issued a declaratory opinion from the Board and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. 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 other transaction or occurrence beyond that set forth by the requesting person.

(Adopted June 23, 2005.)

Source: *Miss. Code Ann*. §25-43-2.105 (Rev. 2006).