

MISSISSIPPI FORESTRY COMMISSION

Administrative Rules

Title 2: Agriculture and Commerce

Part 601: Organization of the Forestry Commission

Part 601 Chapter 1: Board of Commissioners

Rule 1.1 Composition of Board Members. The Forestry Commission is composed of ten (10) members who must be qualified electors of the state. The Dean of the School of Forest Resources at Mississippi State University shall be an ex officio member of the Commission, with full voting authority. The chairman of the advisory committee to the Mississippi Institute of Forest Inventory shall be an ex officio nonvoting member of the Commission. The Governor appoints the remaining eight (8) members of the Commission with the advice and consent of the Senate, for a term of six (6) years.

Source: *Miss. Code Ann.* §49-19-1(1) (Supp. 2011).

Rule 1.2 Appointment of Board Members. The Governor shall appoint one (1) member from each congressional district as constituted at the time the appointments are made and shall appoint the remainder of the members from the state at large. A member from a congressional district must be a certified tree farmer who owns eighty (80) or more acres of forest land or a person who derives a major portion of their personal income from forest-related business, industry, or other related activities. Members of the commission from the state at large may or may not possess the same qualifications as members from the congressional districts. If a vacancy occurs in the office of an appointed member of the commission, the vacancy shall be filled by appointment by the Governor for the balance of the unexpired term.

Source: *Miss. Code Ann.* §49-19-1(1) and (3) (Supp. 2011).

Part 601 Chapter 2: State Forester

Rule 2.1 Selection of State Forester. The Commission shall appoint a State Forester who shall serve at the will and pleasure of the Commission and who is qualified to perform the duties as set forth in *Miss. Code Ann.* §§49-19-3 *et seq.* (Supp. 2011) and to pay him such salary as is provided by the Legislature, and allow him such office expenses incidental to the performance of his official duties as the commission, in its discretion, may deem necessary. Any person appointed by the commission as State Forester shall have received a bachelor's degree in forestry from an accredited school or college of forestry and shall be licensed and registered under the provisions of the Mississippi Foresters Registration Law and in addition shall have had at least five (5) years' administrative experience in a forestry-related field.

Source: *Miss. Code Ann.* §49-19-3(a) (Supp. 2011).

Rule 2.2 Duties. The State Forester shall have the immediate direction and control, subject to the supervision and approval of the Commission, of all matters relating to forestry as authorized by the legislature. The Commission has the authority and duties as specified by the legislature, in particularly those enumerated in Miss. Code Ann. §§49-19-3 *et seq.* (Supp. 2011).

Source: *Miss. Code Ann. §49-19-3 et seq.* (Supp. 2011).

Part 601 Chapter 3: Forestry Districts

Rule 3.1 Districts. The State is divided into seven districts. Each district is managed by a District Forester who reports directly to the State Forester. The districts and the locations of the respective district offices are as follows:

- A. Northeast District – Tupelo, MS
- B. East Central – Philadelphia, MS
- C. South Central – Bay Springs, MS
- D. Southeast – Wiggins, MS
- E. Southwest – Brookhaven, MS
- F. Capital – Pearl, MS
- G. Northwest – Grenada, MS

Source: *Miss. Code Ann. §49-19-3(9)* (Rev. 2003).

Title 2: Agriculture and Commerce

Part 602: Program Areas

Part 602 Chapter 1: Administration

Rule 1.1 Public Records Request Policy. To ensure the orderly implementation of the Public Records Act of 1983, Miss. Code Ann. §§ 25-61-1, *et seq.* (Rev. 2010), the Commission will use the following procedures for responding to requests for records pursuant to said Act.

A. Fees.

All applicable fees shall be collected by the Commission in advance of complying with any request for public records. The Commission establishes the following fees to reimburse the Commission for the cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records.

1. For each person who is required to search, review and/or duplicate a record, a charge shall be assessed equal to each person's salary computed at an hourly rate of pay. Any part of a 1/4 hour spent in such activities shall be assessed for the full 1/4 hour.
2. A charge of \$0.25 per page for each copy shall be assessed. Copies of pages printed on both sides (front and back) shall be considered as two (2) pages for copy charge purposes. Where the records requested are in the form of electronic data, a charge reasonably related to the cost of creating, acquiring and maintaining the geographic information system, multipurpose cadastre or other electronically accessible data, the data contained therein or taken therefrom or information relating thereto, shall be assessed. In determining the charge, the Commission may consider the type of information requested, the purpose or purposes for which the information has been requested, and the commercial value of the information.
3. A packing and handling fee of \$5.00 shall be assessed on all requests for copies of public records to be shipped or mailed.
4. Mailing costs shall be assessed and 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 assessed to the person or entity making the request.

B. Procedures.

1. Requests for records under the Public Records Act shall be received and processed pursuant to the terms, definitions, provisions and exemptions of the Mississippi Public Records Act. Any record specifically declared to be confidential, privileged or exempt by

the Public Records 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 Public Records Act.

2. Any record furnished to the Commission which contains trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction until sixty (60) days following written notice from the Commission to the person or entity who furnished such records advising that a request has been received for copies of such records. The notice shall contain a listing of the specific records requested and the name and address of the person requesting such records. Notices shall be mailed certified mail return receipt requested. If the request has otherwise met the requirements of these procedures, at the end of the sixty (60) 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.\

3 Requests for records shall be in writing and signed by the person making the request. All requests shall be directed to: State Forester, Mississippi Forestry Commission, 660 North Street, Suite 300, Jackson, Mississippi 39202, or the Commission’s current state office mailing address if different.

4. If a request for records is denied, the denial shall be in writing and shall contain a statement of the specific reasons for the denial. A copy of denials shall be maintained in a file for not less than three (3) years from the date any such denial is made.

Source: *Miss. Code Ann. §25-61-1, et seq.* (Rev. 2010).

Part 602 Chapter 2: Health. (Reserved)

Part 602 Chapter 3: Forest Information. (Reserved)

Part 602 Chapter 4: Forest Management.

Rule 4.1 Crew Assistance Fee Rates. The following rates are charged by the Commission for the indicated services.

DESCRIPTION	RATE	TIME CODE - PRIVATE	TIME CODE -PUBLIC
Fire Suppression	\$300/hr 2 crew members/unit	2200	2300
Tree Planting (Hand or Machine)	\$50/ac	2201	2301
Prescribed Burn	\$25/ac, \$200 minimum	2202	2302
Management Plans	\$3.50/ac	2203	2303
Firebreak/Road Maintenance or Construction	\$100/hr, 2hr minimum	2204	2304

Firebreak/Road Maintenance or Construction -D5N ONLY	\$150/hr, 2 hr minimum	2205	2305
Technical Assistance - to include Site Prep, Mid-Rotation & Chemical Application. NOT TO INCLUDE	\$50/hr, 2-man crew, \$200 minimum		2306
Timber Sale - PAC, to include Logging Inspections	\$35/ac		2307
Boundary Line Maintenance	\$270/mi		2308
Timber Sale - Final or Lump Sum	\$35/ac		2309

These rates replace, supplant, and supersede any previous rates published by the Forestry Commission for the listed activities.

Source: *Miss. Code Ann. §49-19-1 et seq.* (Rev. 2003).

Rule 4.2 Forest Resource Development Program. The Forest Resource Development Program (FRDP) was established in 1974 by the Mississippi Legislature for the purpose of developing the state's forest economy. Financial assistance is available to landowners for the continuous growth of commercially valuable timber species on desirable and suitable sites. The Mississippi Forestry Commission serves as the administrator of the program. The District Forester designated as the state FRDP coordinator is responsible for coordinating the technical assistance components and financial elements of the FRDP program. MFC foresters, under the supervision of the District Forester will provide technical assistance on the Forest Resource Development Program in each county. The state FRDP coordinator is responsible for administration of the technical program statewide.

A. General Information

1. The Forest Resource Development Program provides cost-sharing for establishing and improving a stand of forest trees for timber production. Cost-sharing under the FRDP program is allowed for all commercially valuable forest tree species. Cost-sharing is not authorized for the planting of orchard trees, Christmas trees, or for the planting of trees for ornamental purposes.
2. Cost-sharing is available in every county at a flat rate established for each practice not to exceed 75% of actual cost and published in the Mississippi Forestry Commission Policy Manual. There are 2 exceptions: 16th Section school lands and Limited Resource Landowners. School lands may receive up to 100% cost-share assistance on a case by case basis as approved by the Commission. Limited resource landowners may receive up to 75% of actual cost up to 150% of the maximum cost-share rate set for each practice. A limited resource landowner is defined as a landowner whose adjusted gross income is less than the federal earned income credit level.
3. The maximum cost-share payment per applicant per fiscal year is \$7,000 with the exception of 16th Section school trust lands which have less than \$10,000 in escrow funds.

4. Eligible participants include: (1) private, non-industrial landowners, groups, or associations and (2) landowning agencies of the state of Mississippi, or any political subdivision thereof.

5. Lands not eligible for this program are (1) federal lands, (2) those owned by private corporations which manufacture products, and (3) companies providing public utility services of any type or any subsidiary of such corporations or companies. (See L of this section for limitations on participation by MFC employees and other state officials.)

6. A written Forest Stewardship Plan approved by the Service Forester, is required for participants to be eligible for cost-share assistance. The Service Forester or any registered forester may write the plan.

7. Landowners participating in the program must follow the practices as scheduled in the plan and maintain the practice(s) for a minimum of 10 years. The participant is liable for compliance unless requirements of the program are legally transferred to a new owner of the property (see "Recovery of Cost-Share Funds" in the *Mississippi Forestry Commission Policy Manual*). H. FRDP cost-share is not available where federal cost-share funds are received on the same acreage in the same year.

8. No more than 25% of all available FRDP funds may be spent in any one fiscal year on 16th Section school trust lands statewide.

9. The minimum acreage eligible for funding under FRDP is 10 acres. Practices may be cost-shared on less than 10 acres if the practice acres are part of a larger forest management unit of land 10 acres or larger in size. A waiver may be granted by the State Forester for work to be performed on less than 10 acres under special situations and on a case by case basis.

10. Cost-share will not be repeated for any practice except when failure is caused by a natural disaster.

11. The Ethics Commission (Advisory Opinion 88-84-E pertaining to ethic laws as it relates to the Forestry Commission's Forest Resource Development Program funds) has interpreted the laws to prohibit the following participation:

- a. Mississippi Forestry Commission employees
- b. Mississippi Forestry Commission members
- c. Member of the State Legislature
- d. Some State executive officers

The Ethics Commission regards the spouse as the same person, therefore also disqualifying a spouse from participation in the FRDP program. See the *Mississippi Forestry Commission Policy Manual* for guidance on participation by other family members.

Decisions regarding participation by state executive officers will be determined by each specific officer's duties and whether those duties relate to or affect MFC programs. A special request to the State Forester is required for each executive officer wanting to participate in FRDP.

B. Allocation of Funds

The state FRDP coordinator will annually notify each District Forester of district allocations based on need and available funding. The District Forester, or designee, will promptly notify each county of the allotment for the fiscal year.

C. Application Procedures

1. Requests for funding under the Forest Resource Development Program will be accepted at the District or County office on a continuous basis throughout the year. Requests will be made on Form 660.2, Forest Resource Development Program Cost-Share Agreement. In addition the Service Forester will be responsible for maintaining a current list of landowner requests for FRDP assistance on file at the county office. The list will include the landowner's name, address, telephone number, date the application is received by the MFC, a general description of the work to be performed and the number of acres on which the work is to be performed. The list will be *purged annually* by notifying each applicant of their funding status and determining their continued interest in the program.

2. Applications for cost-sharing under FRDP will be accepted by MFC employees within the county in which the work is to be done. An exception may occur when a contiguous tract of land crosses county boundaries. Applications should be accepted on a specific acreage of land and designated for specific forest management practices (e.g. site preparation and planting, release, etc.)

In order to better identify and track FRDP assistance cases statewide, it is important that separate applications be made for work to be carried out on different tracts of land. For requests for reforestation, include all practices associated with the reforestation effort (light site prep, bush hogging, planting, firebreaks, etc.) on a single application. All other work (release, silvicultural burning, firebreaks not associated with reforestation, etc.) should be on a separate application(s).

3. Applications will be approved on a first-come, first-served basis. The MFC reserves the right to prioritize applications based on extenuating circumstances. Deviations from the first-come, first-served basis must be approved in writing by the District Forester or designee.

4. The Service Forester will, on each request to be funded, prepare a management plan or approve a plan prepared by a registered forester. The Service Forester will recommend or approve needed practices by on-site inspections prior to plan completion,

approval, or implementation. Copies of the plan will be provided to the landowner prior to submitting Form 660.2 to the District Office.

5. As funding becomes available to fill a landowner request, a complete application will be forwarded, with the plan, to the District Forester, or designee. A complete application will include the following:

- a. The original completed Form 660.2 signed and dated by the landowner. (A power of attorney may be necessary if ownership or legal authority is not clear.)
- b. A W-9, Request For Taxpayer Identification Number and Certification, verifying the landowner's social security or employer identification number
- c. Verification of ownership of the land (e.g. copy of deed, tax receipt, etc.)

If the landowner already has a W-9 on file, the information should be verified and the existing W-9 will suffice. Copies of form W-9 will be maintained in the District Office for all participating landowners.

When approved, the District Forester, or designee, will electronically enter the Form 660.2 into the FRDP database. A copy of Form 660.2, the W-9, verification of ownership (if required), and plan will be maintained in the District Office. For all requests involving kudzu control, a copy of the plan will be forwarded to the state FRDP coordinator with Form 660.2.

D. Application Approval

An application is approved for funding when a Form 660.3 is generated at the District Office. Form 660.3 will be forwarded to the county authorizing work to begin. The Service Forester will notify the landowner of the approval and make the landowner aware of his/her responsibility for contacting appropriate agents, vendors, etc., and encourage him/her to have a written contract for all work to be done.

E. Cost-Share Practices

Practices and cost-share rates must be approved by the Commission and may be found in the *Mississippi Forestry Commission Policy Manual* Specifications for each practice may be found in the "Specifications for Forestry Work" (see attached revision 7/2011) section of *Forest Management Procedures*. A list of acceptable species for planting under FRDP may be found in Appendix I (see attached) and guidelines will apply to FRDP cases:

1. Plan approval is required by the District Forester or designee prior to submitting a 660.2 when the following practices are recommended:
 - a. Kudzu control
 - b. Cogongrass Control

- c. Multiple site preparation treatments, such as chemical and mechanical site preparation of pre and post chemical site preparation applications.
- d. Fertilization

When prior approval of a plan is required the plan must first be approved by the District Forester, or designee. The plan should be submitted to the District Forester, or designee, via email. The District Forester will approve or deny the plan.

2. For requests involving invasive species control, the landowner will be required to incur all costs until control or abatement as determined by the MFC is achieved and if applicable, the planting is completed prior to receiving payment.

F. Compliance Checks

The Service Forester will be responsible for conducting compliance checks for all FRDP jobs within the county. The Service Forester may designate trained and competent field personnel under his/her supervision to conduct compliance checks. The Service Forester will concur with the findings of a compliance check prior to notifying the vendor or landowner of the results.

Planting compliance checks will be made in accordance with the procedures outlined in the MFC's *Seedling Care and Planting Handbook*. These are minimum requirements for conducting compliance checks. If a problem exists on a planting job, the percentage of the sample will be increased.

The number of seedlings planted per acre must be within the tolerance established in the plan and 85% of seedlings sampled must be without error. The vendor will be responsible for correcting the planting job to bring the practice into compliance. (See "Consultants/Vendors" in the General Forest Management Information section for information on the Migrant and Seasonal Agricultural Worker Protection Act.)

If a planting job fails compliance when checked the second time, the District Forester will be notified and a field audit will be conducted by the District. If a tree planting job cannot be corrected within the current year, the FRDP application will be canceled or a request to carry the application over to the next fiscal year submitted to the District Forester (see "Cancelations, Carryover Applications and Partial Payments").

G. Project Completion, Certification, and Request for Payment

The Service Forester is responsible for certifying compliance on all FRDP practices and acreage. Upon completion and approval of the landowner's FRDP practice(s), the Service Forester will fill in the "completed," "payment," and "certification of performance" portions of Form 660.3 and attach copies of all invoices. Show only those acres on which FRDP cost-share funds were used. Additional acres planted by a landowner without FRDP cost-share assistance will be reported, along with the FRDP acres on Form 606.6, Forestry Assistance Report. A copy of all records will be maintained in a landowner file in the county office and a copy sent to the District Office for final approval and authorization for payment.

Landowners will be notified of the final date for submitting a request for payment and the required invoices. Failure to respond within the required time frame may result in cancelation of the approved FRDP application.

The District Forester, or his designee, will check all paperwork and initial Form 660.3 verifying accuracy and completeness of records. Form 660.3 and all invoices will be forwarded to the State Office Accounts Department for payment. The District Office will retain copies on file.

The State Office Administrative Assistant with FRDP responsibility will check for completeness and process for payment.

Copies of invoices for all work performed under FRDP are required for payment. The minimum standards for an acceptable invoice are as follows:

1. Name and address of vendor
2. Landowner name (same as on Form 660.3 or written justification if not the same)
3. Date of invoice
4. Description of work performed (planting, shearing, etc.) including the date the work was performed
5. Number of acres or linear feet performed
6. Price per unit of measure (excluding MFC invoice)
7. Total cost of job

For invoices involving a combination of activities the forester should break out each component activity (such as cost of seedlings) without requiring the landowner to obtain separate invoices.

H. Cancelations, Carryover Applications and Partial Payments

1. Cancellation of an approved FRDP application will be made only after notifying the landowner in writing, through certified mail, of the intent to cancel. The landowner will be given a minimum of 10 days advance notice prior to cancelation. Copies of the certified mail receipt will be maintained in the landowner file in the county office.

If a landowner is unable to carry out the practices approved under FRDP due to circumstances beyond his/her control, the application may be canceled and the landowner given priority for funding in the next fiscal year. To cancel an application, the Service Forester will mark the approved 660.3 as canceled, initial and date it, and forward it to the District Office.

2. In the event a landowner is able to complete only a portion of the approved practices prior to the end of the fiscal year, a request to carry the application over to the next fiscal year should be made through the District Forester. Upon approval, the District Office will notify the state FRDP coordinator.

Partial payments may be made under FRDP on hardship cases. These cases must be approved by the State Forester or designee. A "Request for Partial Payment" form,

requested from and supplied by the MFC, will be signed by the landowner and submitted to the State Forester through the appropriate District Forester. This form is to be used only under hardship cases and special cases where a landowner is unable to complete a planting job in the year it is planned and a partial payment is requested for site preparation work. Partial payments must be approved by the State Forester. The form should be signed by the landowner and submitted along with an explanation of the hardship or special case to the State Forester through the appropriate District Forester. The preferred way to handle cases where the planting is not completed during the same year as the site preparation is to cancel the case and give priority for funding to the case in the following year.

3. It is the responsibility of the Service Forester to assure that the FRDP case is completed. If the landowner does not complete the job, the state FRDP coordinator will be notified through the appropriate line of authority. Failure to follow through with prescribed practices may result in forfeiture of cost-share assistance or reimbursement of any funds paid.

I. FRDP Spot Checks

The District Forester, or designee, will be responsible for spot checks of all practices performed under the Forest Resource Development Program. Service Forester records will also be checked. Spot checks will be conducted annually in each county. The number of checks to be conducted per county will be in accordance with the following:

<u>Number of Cases in County</u>	<u>Minimum Number of Cases to Check</u>
1-10	2
11-20	4
21-40	6
Above 40	8

The cases to be checked will be randomly selected from the county FRDP records. All aspects of each FRDP case will be checked for accuracy and completeness. The minimum plot requirements shown on the Tree Planting Compliance Form will be utilized to determine the number of plots to sample per tract. If applicable, ways for correcting performance of compliance or discrepancies in paperwork will be discussed with the Service Forester.

Source: *Miss. Code Ann. §49-19-201 et seq.* (Rev. 2012).

Rule 4.3 Guidelines for Determining Harvest Size on School Trust Lands

A. Maximum size for thinnings has been set at 120 acres. The maximum sale size for regeneration sales has been set at 110 acres.

B. Sale size for initial (1st) thinnings may exceed 120 acres if the proposed sale consists of the entire strata.

C. Intermediate thinnings, 2nd and 3rd thinnings, which exceed 120 acres, will be divided into smaller sale sizes.

D. Regeneration sales that exceed 110 acres in size will require District Forester approval.

E. All sales that exceed these established limits must have the District Forester's approval. The District Forester will notify the State Forester and Assistant State Forester of these sales.

Source: *Miss. Code Ann. §29-3-45 et seq.* (Rev. 2010).

Part 602 Chapter 5: Forest Protection.

Rule 5.1 Burn Ban Request Procedure. The State Forester or his designee shall have the authority to utilize all applicable indices, models or reports to assess the drought and/or extreme wildfire conditions. Should these conditions, in his judgment, constitute a serious threat, the State Forester or his designee shall notify the county Boards of Supervisors that these conditions exist and may request or recommend that the Boards of Supervisors enact a temporary ban in accordance with the statute on all outdoor burning or the type burns which are escaping and causing wildfires. The State Forester or his designee shall also notify the Boards of Supervisors when these conditions have abated.

The State Forester or his designee will consider any request made by a Boards of Supervisors for a temporary burning ban which is made in accordance with established procedures.

In order to assess the need for a request to a county Boards of Supervisors to implement a burning ban per Miss. Code Ann. §49-19-351 (Rev. 2003), or to evaluate a request from a county Boards of Supervisors for same, all applicable sources of information may be utilized. These sources may include, but are not limited to, some or all of the following models, indices, reports, forecasts or other pertinent information. Depending on the prevailing conditions, the relative importance or weight given to various items from each source of information may not be equal.

- A. Keetch-Bryam Drought Index (KDBI)
- B. Fire Spread Index
- C. Daily Fire Report
- D. Large Fire Activity
- E. Rainfall Deficit
- F. Fuel Moisture Readings
- G. Long and Short Range Weather Forecasts
- H. Analysis of Fire Causes

If conditions indicate a need for a burning ban, the State Forester or his designee will contact the appropriate Forestry Commission District Office in the areas affected. The District Foresters or their designee will forward the information to the Boards of Supervisors in their respective Districts. If the Boards of Supervisors approves the recommended burning ban, they shall by order notify the Forestry Commission District Office.

If the Boards of Supervisors wish to institute a ban, they will make a request in writing to their respective Mississippi Forestry Commission District Office. The request must outline, specifically, the reasons for requesting the ban and contain a specific period of time, beginning and ending, that the ban will be in effect. The District Forester will review the request and forward it to the

State Forester with a written recommendation on whether the ban should be implemented. Requests will not be considered until the District Forester in the affected area is consulted and makes a recommendation on the request.

The flow of information will either be down from the State Office to the District Offices to the Presidents of the Boards of Supervisors or up from the Boards of Supervisors President to the District Offices to the State Office.

Should a ban be implemented by a Boards of Supervisors without following the provisions of Miss. Code Ann. §49-19-351(Rev. 2003) or the Mississippi Forestry Commission's (MFC) procedures to implement them, the responsibilities for those actions will fall on the Boards of Supervisors.

Source: *Miss. Code Ann. §49-19-351 (Rev. 2012).*

Rule 5.2 Mississippi Prescribed Burning Act.

Rule 5.2.1 No property owner or his agent, conducting a prescribed burn pursuant to the requirements of the Act, shall be liable for damage or injury caused by fire or resulting smoke unless negligence is proven.

Rule 5.2.2 Prescribed burning conducted under the provisions of this Act shall:

- A. Be accomplished only when at least one (1) certified prescribed burn manager is supervising the burn or burns that are being conducted;
- B. Require that a written prescription be prepared and notarized prior to prescribed burning;
- C. Require that a burning permit be obtained from the Mississippi Forestry Commission; and
- D. Be considered in the public interest and shall not constitute a public or private nuisance when conducted pursuant to state air pollution statutes and rules applicable to prescribed burning.

Source: *Miss. Code Ann. §49-19-307 (1) and (2) (Rev. 2012).*

Rule 5.3 Burning Permit Acquisition. In conjunction with the Mississippi Department of Environmental Quality, the Mississippi Forestry Commission issues burning permits based on the daily fire weather forecast. Permits are required for any fire set for a recognized agricultural and/or forestry purpose. Call your local Central Dispatch Center to inquire about a burning permit. Be prepared to answer the following questions: Type of burning (agriculture or forestry); Number of acres; Forestry purpose (hazard reduction, control undesirable species, control disease, site prep, wildlife mgt or other); Landowner name, Person responsible for fire; Address, Telephone number; Location of property (40, section, township and range); Beginning and end date and time of fire.

Source: *Miss. Code Ann. §49-19-3(5) (Rev. 2012); Miss. Code Ann. §49-2-9(1) (Rev. 2012)*

Part 602 Chapter 6: Urban and Community Forestry. (Reserved)

Title 2: Agriculture and Commerce

Part 603: Declaratory Opinion Rules

Part 603 Chapter 1: Declaratory Opinion Rules

Rule 8.1 Application of Chapter. This chapter sets forth the Forestry Commission's rules governing the form, content, and filing of requests for declaratory opinions, the procedural rights of persons in relation to the written requests, and the Forestry Commission's procedures regarding the disposition of requests as required by Mississippi Code § 25-43-2.103.

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

Rule 8.2 Scope of Declaratory Opinions. The Forestry Commission will issue declaratory opinions regarding the applicability to specified facts of:

- A. a statute administered or enforceable by the Forestry Commission,
- B. a rule promulgated by the Forestry Commission, or
- C. an order issued by the Forestry Commission.

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

Rule 8.3 Scope of Declaratory Opinion Request. A request must be limited to a single transaction or occurrence.

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

Rule 8.4 How to Submit Requests. When a person with substantial interest, as required by Section 25-43-2.103 of the Administrative Procedures Act, requests a declaratory opinion, the requestor must submit a printed, typewritten, or legibly handwritten request.

- A. Each request must be submitted on 8-1/2" x 11" white paper.
- B. The request may be in the form of a letter addressed to the Forestry Commission or in the form of a pleading as if filed with a court.
- C. Each request must include the full name, telephone numbers, and mailing address of the requestor(s).
- D. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.
- E. Each request must clearly state that it is a request for a declaratory opinion.

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

Rule 8.5 Signature Attestation. Any party who signs the request 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 agency, administrative, or judicial tribunal.

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

Rule 8.6 Request Content Requirement. Each request must contain the following:

- A. A clear identification of the statute, rule, or order at issue;
- B. The question for the declaratory opinion;
- C. A clear and concise statement of all facts relevant to the question presented;
- D. The identity of all other known persons involved in or impacted by the facts giving rise to the request including their relationship to the facts, and their name, mailing address, and telephone number; and
- E. A statement sufficient to show that the requestor has a substantial interest in the subject matter of the request.

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

Rule 8.7 Reasons for Refusal of Declaratory Opinion Request. The Forestry Commission 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:

- A. The matter is outside the primary jurisdiction of the Forestry Commission;
- B. Lack of clarity concerning the question presented;
- C. There is pending or anticipated litigation, administrative action or anticipated administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
- D. The statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
- E. The facts presented in the request are not sufficient to answer the question presented;
- F. The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
- G. The request seeks to resolve issues which have become moot or are abstract or hypothetical such that the requestor is not substantially affected by the rule, statute, or order on which a declaratory opinion is sought;
- H. No controversy exists or is certain to arise which raises a question concerning the application of the statute, rule, or order;
- I. The question presented by the request concerns the legal validity of a statute, rule, or order;
- J. 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;
- K. No clear answer is determinable;
- L. The question presented by the request involves the application of a criminal statute or sets forth facts which may constitute a crime;
- M. The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- N. The question is currently the subject of an Attorney General's opinion request;
- O. The question has been answered by an Attorney General's opinion;

- P. One or more requestors have standing to seek an Attorney General's opinion on the proffered question;
- Q. A similar request is pending before this agency, 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; or
- R. The question involves eligibility for a license, permit, certificate or other approval by the Forestry Commission or some other agency and there is a statutory or regulatory application process by which eligibility for said license, permit, or certificate or other approval may be determined.

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

Rule 8.8 Agency Response. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Forestry Commission shall, in writing:

- A. Issue an opinion declaring the applicability of the statute, rule, or order to the specified circumstances;
- B. Agree to issue a declaratory opinion by a specified time but no later than ninety (90) days after receipt of the written request; or
- C. Decline to issue a declaratory opinion, stating the reasons for its action.

The forty-five (45) day period shall begin on the first business day after which the request is received by the Forestry Commission.

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

Rule 8.9 Availability of Declaratory Opinions and Requests for Opinions. Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying at the expense of the viewer during normal business hours. All declaratory opinions and requests shall be indexed by name, subject, and date of issue. Declaratory opinions and requests which contain information which 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.

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