

## **Soil and Water Conservation Commission**

### **Title 2: Agriculture and Commerce**

#### **Part 901: MSWCC Method of Operation**

##### **Part 901 Chapter 1: Role of MS Soil and Water Conservation Commission**

*Rule 1.1 Statutory Authority.* In 1938, the Mississippi Legislature officially recognized that the state's soil resources were deteriorating at an enormous rate and in its effort to solve the problem, enacted the Soil Conservation Law, in which it created the State Soil Conservation Committee and made provisions whereby local landowners could organize a soil conservation District. With the passage of time other natural resource concerns arose, most notably the loss of, degradation of and management of the state's water resources. Through various amendments the Committee became the Mississippi Soil and Water Conservation Commission and Soil Conservation Districts became Soil and Water Conservation Districts.

Source: *Miss. Code Ann. § 69-27-1* (1972)

*Rule 1.2 Membership of the Commission.* The membership of the Mississippi Soil and Water Conservation Commission and the Commission's authority to promulgate such rules and regulations as deemed necessary.

A. The eleven (11) voting members of the Commission are:

- I. The Commissioner of Agriculture and Commerce;
- II. The State Forester;
- III. The President of the Mississippi Association of Conservation Districts;
- IV. The first vice president of the association;
- V. The second vice president of the association;
- VI. The immediate or most recent past president of the association willing and able to serve; and
- VIII. Five (5) members to be elected from the membership of the soil and water conservation district commissioners at the annual meeting of the association, one (1) from each United States congressional district by a caucus of the association members from each congressional district as constituted at the time of the caucus and the remainder to be elected from the state at large by the membership of the association.
- IX. The five (5) elected members serve three (3) year staggered terms.

B. Two members serve ex-officio and without voting power, but with all privileges of discussion and debate as follows:

- I. The Director of the State Extension Service; and
- II. The Director of the State Agricultural and Forestry Experimental Station.

C. Two members serve as advisors and without voting power, but with all privileges of discussion and debate as follows:

I. The United States Department of Agriculture, Natural Resources Conservation Service- State Conservationist, or his/her designee; and

II. Alcorn State University, Division of Agriculture – Dean of Agriculture, or his/her designee.

D. In the event of a vacancy during an unexpired term of one of the elected Mississippi Soil and Water Conservation Commission members, the Commission shall appoint a Soil and Water Conservation District Commissioner from the appropriate Congressional District, or State-at-large, until the next annual meeting of the Mississippi Association of Conservation Districts, at which time an election will be held to fill the unexpired term. Should the unexpired term be less than one year, the Commission shall appoint a Soil and Water Conservation District Commissioner from the appropriate Congressional District, or State-at large, to complete the term.

Authority: MCA section 69-27-9

*Rule 1.3 Statutory Responsibilities of the Mississippi Soil and Water Conservation Commission.*  
The general duties and powers of the Commission as follows:

- A. To offer any assistance as may be appropriate to the commissioners of soil and water conservation districts in the carrying out of their powers and programs.
- B. To keep the commissioners of each of the districts informed of the activities and experiences of all other districts, and to facilitate cooperation between districts.
- C. To coordinate the programs of the soil and water conservation districts.
- D. To secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of districts.
- E. To disseminate information concerning the activities and programs of the soil and water conservation districts, and to encourage the formation of districts.
- F. To seek and receive grants of monies, and other assets, from any source to carry out its duties and responsibilities.
- G. To distribute any appropriated or other funds or assets under its control from state, federal or other governmental agencies or political subdivisions, or from private grants, including matching funds to districts.
- H. To establish and administer qualification standards for district commissioners and officers.
- I. To give guidance and overall supervision to districts when requested, or acceptable
- J. To study, classify and evaluate land use needs and problems in the State of Mississippi; to make recommendations leading to adoption of land use policy and broad guidelines for meeting the needs and problems so identified.
- K. To demonstrate to landowners and operators within the state, equipment that will demonstrate energy and soil and water conservation.
- L. To enter into and to authorize the executive director to execute with the approval of the Commission, contracts, grants, cooperative agreements and memoranda of

understanding with any federal or state agency or subdivision thereof, or any public or private institution location inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the Commission powers and duties.

- M. To cooperate with the Commission on Environmental Quality in addressing agricultural nonpoint source pollution.

Source: *Miss. Code Ann. §§ 69-27-13, 49-17-13 (1972)*

*Rule 1.4* The mission of the Mississippi Soil and Water conservation Commission is to effectively guide and promote the conservation, development, protection and proper utilization of the soil, water and related resources of the state.

Source: *Miss Code Ann. § 69-27-9*

*Rule 1.5 Commission Working Relations with Soil and Water Conservation Districts, Mississippi Association of Conservation Districts and United States Department of Agriculture/Natural Resources Conservation Service.* The primary objective of the Commission, districts, association and the USDA/NRCS is soil and water conservation. The organizations compliment and supplement each other by maintaining good communication, having common goals and priorities, and sharing available resources such as technical and financial assistance and equipment, material and resource data. The working relationship is mostly volunteer and requires the exercise of special skills of those involved. The working relationship with soil and water conservation districts is in a different setting because of the powers of the Commission related to the districts. The commission offers a wide range of assistance to districts but has very limited authority to direct district commissioners as to what they must do. The Commission's objective is to be a team player in carrying out a soil and water conservation program in this state.

Source: *Miss Code Ann. § 69-27-13*

*Rule 1.6 Funding of the Commission.* As a state agency the Mississippi Soil and Water conservation Commission is funded by appropriation from the state legislature. Each year it submits a budget request for funds for the coming fiscal year (July 1 through June 30) to the State Department of Finance and Administration and to appropriate committees of the legislature. The Commission will seek and receive grants and other funds from any legitimate source and make appropriate distribution of such funds in carrying out the purpose of the Soil and Water Conservation District Act.

- A. Beginning with the month of January, the Commission will meet quarterly. The date of the next meeting will be established at each meeting. Items to be placed on the agenda for meetings must be received in the Commission office two (2) weeks prior to the meeting date. The Commission staff is authorized to obtain additional information on any matter to be considered at the Commission meeting and to make recommendations concerning its disposition. Whenever possible, the staff shall furnish to the members information on subjects to be presented prior to the meeting.

Any matter not resolved at the Commission meeting will be referred to the Commission staff for further analysis and recommendations. All meetings will be open to the public.

- B. The Commission will support the objectives and activities of the Mississippi Association of Conservation Districts, where these are in keeping with the duties and powers of the Commission as established by law. The Commission employees may assist the association in carrying them out.
- C. As State management agency for agricultural related non-point sources of pollution, the Commission will keep informed as to its responsibilities, seek programs and funds to reduce the problems, and enlist, assist, and cooperate with federal and state agencies and organizations that have an interest in and can make a contribution to improving water quality.
- D. The Commission will stay informed about federal and state legislation that may have an impact upon soil and water conservation work in the state. It will keep the congressional members and state legislators informed as to the needs for accomplishing desired soil and water conservation. It will further provide requested information related to budget and finance to the appropriate committees of the state legislature and to the governor's office.
- E. The Commission will cooperate with and support other federal and state agencies, organizations, etc., that may make a contribution to the soil and water conservation program. It will also provide a professional staff member to serve on various committees where its function might have an impact on the Commission's work.
- F. The State Employee Handbook issued by the State Personnel Board contains the official operating policies and procedures for the Commission. Subject matters included are Employment Process, Service Employment, Leave Policies, Employee Benefits, Standard of Employee Conduct, Forms of Grievances and Appeals. Where there are options and latitude provided in the handbook or when clarification is needed, the Executive Director is authorized to issue amendments to the handbook. He will obtain approval of the Commission as he deems necessary or desirable.
- G. The Commission will serve as liaison between the districts and the State Bureau of Geology in the implementation of the Mississippi Surface Mining and Reclamation Act. The assistance offered will relate to the responsibilities of the local soil and water conservation districts which pertain to the reclamation plan. The objective is the protection of the soil and water resources. The Commission has no authority and will not become involved in the regulatory aspect of surface mining.
- H. The Commission's planning priority shall be on a watershed basis as set forth in the appropriate policies, rules and regulations set forth. The Commission will request soil and water conservation districts and the Natural Resources Conservation Service provide information in establishing priorities.

Source: *Miss Code Ann.* § 69-27-9

## **Part 901 Chapter 2: Oral Proceedings on Proposed Rules**

*Rule 2.1* This rule applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed rules and amendments to rules before the Commission.

Source: *Miss. Code Ann. § 25-43-3.104* (1972)

*Rule 2.2 When Oral Proceedings will be Scheduled on Proposed Rule.* The Commission 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.

Each request must be printed or typewritten, 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 Commission and signed by the requestor(s).

Source: *Miss Code Ann. § 25-43-3.104* (1972)

*Rule 2.3 Notification of Oral Proceeding.* 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.

Source: *Miss. Code Ann. § 25-43-3.104* (1972)

*Rule 2.4 Public Presentations and Participation.* The Commissioner, or his designee, who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

- A. 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.
- B. Persons wishing to make oral presentations at such a proceeding shall notify the Commission at least one business day prior to the proceeding and indicate the general object of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not previously contacted the Commission.
- C. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any information relating to their participation deemed appropriate by the presiding officer.
- D. 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.
- E. Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.
- F. 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 participant's time where the orderly conduct of the proceeding so require.

Source: *Miss Code Ann § 25-43-3.104 (1972)*

*Rule 2.5 Conduct of Oral Proceeding.*

- A. 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:
  - I. Call proceeding to order;
  - II. Give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the Commission for the proposed rule;  
Call on those individuals who have contacted the Commission about speaking on or against the proposed rule;
  - III. Allow for rebuttal statements following all participants' comments;
  - IV. Adjourn the meeting.
- B. Questions. The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussions. 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.
- C. Physical and Documentary Submissions. Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Commission and are subject to the Commission's public records request procedure.
- D. Recording. The Commission may record oral proceedings by stenographic or electronic means.

Source: *Miss. Code Ann. § 69-27-9*

**Part 901 Chapter 3: Declaratory Opinions**

*Rule 3.1* These rules set for the Mississippi Soil and Water Conservation Commission's, hereinafter "Commission", rules governing the form and content of requests for declaratory opinions, and the Commission's procedures regarding the requests, as required Mississippi Code Section 25-43-2.103. The 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.

Source: *Miss. Code Ann. § 25-43-2.103*

*Rule 3.2 Persons Who May Request Declaratory Opinions.* Any person with a substantial interest in the subject matter may request a declaratory opinion from the Commission 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 Commission’s administration of the laws within its primary jurisdiction. “Primary jurisdiction of the Commission” means the Commission has a constitutional or statutory grant of authority in the subject matter at issue. The Commission will issue declaratory opinions regarding the applicability to specified facts:

- A. A statute administered or enforceable by the Commission or;
- B. A rule promulgated by the Commission.

The Commission will not issue a declaratory opinion regarding a statute or rule which is outside the primary jurisdiction of the agency.

Source: *Miss Code Ann. § 69-27-9*

*Rule 3.3 Circumstances in Which Declaratory Opinions Will Not be Issued.* The 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 limited to:

- A. Lack of clarity concerning the question presented;
- B. There is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make the answer unnecessary;
- C. 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;
- D. The facts presented in the request are not sufficient to answer the question presented;
- E. The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
- F. 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 statute or rule on which a declaratory opinion is sought.
- G. No controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute or rule;
- H. The question presented by the request concerns the legal validity of a statute or a rule;
- I. 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;
- J. No clear answer is determinable;
- K. The question presented by the request involves the application of a criminal statute or set of facts which may constitute a crime;
- L. The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- M. The question is currently the subject of an Attorney General’s opinion request or has been answered by an Attorney general’s opinion;

- N. A similar request is pending before the Commission 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 an unauthorized practice of law;
- O. Where issuance of a declaratory opinion may adversely affect the interests of the State, the Commission or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise;
- P. The question involve eligibility for a license, permit, certificate or other approval by the Commission 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.

Source: *Miss. Code Ann. § 69-27-9*

*Rule 3.4 Written Request Required.* 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 Commission. All requests must be mailed, delivered or transmitted via facsimile to the following:

Mississippi Soil and Water Conservation Commission  
 680 Monroe Street, Suite B  
 Jackson, MS 39202  
 Fax number (601) 354-6628.

The request shall clearly state that it is a request for a declaratory opinion. No oral, telephone requests or email requests will be accepted for official opinions. 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.

Source: *Miss Code Ann. § 69-27-9*

*Rule 3.5 Question Presented.* Each request shall contain the following:

- A. A clear and concise statement of all facts on which the opinion is requested;
- B. A citation to the statute or rule at issue;
- C. The question(s) sought to be answered in the opinion, stated clearly;
- D. A suggested proposed opinion from the requestor, stating answers desired by petitioner and a summary of the reasons in support of those answers;
- E. 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;
- F. A statement to show that the person seeking the opinion has a substantial interest in the subject matter.



Source: *Miss. Code Ann. § 69-27-9*

*Rule 3.6 Time for Commission's Response.* Within forty-five (45) days after receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Commission shall, in writing:

- A. Issue a declaratory opinion regarding the specified statute or rule as applied to the specified circumstances;
- B. Decline to issue a declaratory opinion, stating the reason for its action; or
- C. Agree to issue a declaratory opinion by a specified time but not later than ninety (90) days after receipt of the written request;

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 Commission, whichever is sooner.

Source: *Miss. Code Ann. 69-27-9*

*Rule 3.7 Opinion Not Final for Sixty Days.* 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 Commission may, in its discretion, withdraw or amend the declaratory opinion for any reason which 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 legal or factual error.

Source: *Miss. Code Ann. § 69-27-9*

*Rule 3.8 Notice by Commission to Third Parties.* The Commission 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.

Source: *Miss. Code Ann. § 69-27-9*

*Rule 3.9 Public Availability of Requests and Declaratory Opinions.* Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Public records Act and the Commission's public records request procedure. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act and other laws shall be exempt from this requirement and shall remain confidential. The Commission will not pursue any civil, criminal or administrative action against a person who is issued a declaratory opinion from the Commission 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 Commission shall be binding only on the Commission 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.

Source: *Miss Code Ann.* § 69-27-9