

MISSISSIPPI DEPARTMENT OF AGRICULTURE AND COMMERCE

Subpart 3
Chapter 01

Non-Native Plant Species

141.01. APPLICATION. Anyone seeking a permit from the state to cultivate a nonnative plant species hereinafter referred to as “NPS”, for the purposes of fuel production or purposes other than agriculture, as described in Miss. Code of 1972, §69-25-10, must submit to the state a written application. An amended application for a permit will be required if the planting will exceed five percent (5%) of the acreage of the original permit. No permits shall be issued for any planting of plants that are on the state or federal noxious weed list. No permit shall be issued unless the applicant is the owner of the property or has written permission from the property owner to utilize the land for NPS plantings for the duration of the life of the permit. Separate permits are required for each nonnative plant species to be planted. Permits shall be good for one year and shall be required to be renewed by the permit holder for continued cultivation of the nonnative plant species. Each application must include the name and address of the applicant, the name of the plant to be cultivated, a legal description of the lands to be under cultivation and the estimated cost of removing and destroying such plants along with the basis for calculating such estimate. If the applicant is a corporation, partnership, or other business entity, the applicant must also provide in the application the name and address of a contact person. The applicant shall notify the department within 10 working days of any change of contact information. In evaluating the permit application, the Department along with representatives of Mississippi State University may visit the proposed growing location and meet with the prospective permit holder to determine if feasible measures can be taken to prevent the spread of the plant, or pests associated with said plant, into neighboring ecosystems. The permit will cover the following subjects, which may be conditions upon which the permit is granted, to-wit:

- a. Measures must be taken to prevent spread by seed.
- b. A buffer area, wide enough to properly mitigate plant spread into adjacent areas, shall be required. The fallow area may be used singularly or in combination with a berm surrounding the NPS planting.
- c. Any equipment used on the site must be cleaned of all plant debris before being moved from the property.
- d. Wildfire protection measures will be required to mitigate fire risk and damage to surrounding areas.
- e. Measures must be taken to prevent infestation or spread of certain plant pests in the area.
- f. A compliance agreement containing any additional terms needed to prevent plant or pest spread shall be signed and will be made an addendum to the permit.

Failure to abide by the terms of the permit will be considered to be a violation of these rules.

141.02. BOND. Each permit holder shall maintain for the subject growing location a corporate surety bond in an amount determined by the department, but not less than 150 percent of the estimated cost of removing and destroying the plants cultivated under the special permit, and

subject to a cap of \$5,000.00/ac. The original bond shall be filed with the Department. The bond shall be conditioned to secure the permittee's performance of its duties, obligations and responsibilities under the Nonnative Plant Species Law, Miss. Code of 1972, §69-25-10, and these regulations. The bond proceeds shall be used to pay all costs and expenses incurred by the Department in removing and destroying the plants cultivated under the special permit. The surety company shall give the department 30 days' written notice of cancellation by certified mail in order to cancel a bond, but the liability of the surety for the acts or omissions of the permittee shall continue during the thirty days of cancellation notice. Cancellation or expiration of a bond does not relieve a surety company from liability which accrues before the cancellation becomes final, but which is discovered after that date, and which may have arisen at any time during the term of the bond. The bond agreement must include terms binding the instrument to the Department. The bond shall be renewed annually, with documentary proof thereof to be submitted to the Department. The amount of such bond shall be increased or decreased, upon order of the department, at any time if the department finds such increase or decrease to be warranted by the cultural practices of the permit holder.

141.03. DESTRUCTION OF PLANTS. After obtaining a permit, if the permit holder abandons or ceases to maintain or cultivate the plants authorized by the permit, if the permit expires without being renewed or if the permit holder ceases to abide by the conditions of the permit, the permit holder shall immediately remove and destroy the plants that are subject to the permit. The permit holder shall notify the Department of the removal and destruction of the plants within 10 days after such event.

If the Commissioner of Agriculture and Commerce:

- a. Determines that the permit holder has abandoned or is no longer maintaining or cultivating the plants subject to the permit and has not removed and destroyed the plants authorized by the permit;
- b. Determines that the continued maintenance or cultivation of the plants presents an imminent danger to the public health, safety or welfare;
- c. Determines that the permit holder has violated the conditions of the permit;
- d. Receives a notice of cancellation of the surety bond; or
- e. Finds that the permit has expired without being renewed,

the Commissioner may issue an order of destruction to be effective immediately, prior to notice and a hearing, directing the permit holder to immediately remove and destroy the plants authorized to be cultivated under the permit. A copy of the order of destruction shall be mailed by certified mail to the permit holder and to the surety on his bond.

If, upon issuance of an order of destruction by the Commissioner, the permit holder fails to remove and destroy plants subject to the permit within 30 days after issuance of the order, or such shorter period as may be required by the public health, safety or welfare, the Commissioner or his representatives may enter the cultivated acreage and remove and destroy the plants that are the subject of the permit. The costs and expenses incurred by the Department in removing and destroying the plants subject to the permit shall be reimbursed to the Department by the permit holder within 30 days after the date the permit holder and the surety on his bond have been served with a copy of the department's invoice for costs and expenses incurred in removing and destroying the cultivated plants. Failure of the permit holder to timely reimburse the Department for the incurred costs and expenses entitles the Department to reimbursement from the surety on the bond. However, if the permit holder or the surety objects in writing to the reasonableness of

the invoice before the expiration of said 30 day period, the permit holder or the surety is entitled to a hearing before the reviewing officer on this issue. The reasonableness of the invoice issue shall be heard by the reviewing officer in addition to any other issues brought up for hearing by the permittee in accordance with the next immediate paragraph.

141.04. HEARING. The permittee shall have thirty (30) days after receipt of the order of destruction to request an informal administrative review before the Director of the Bureau of Plant Industry, or his designee, who shall act as reviewing officer concerning any issue arising in the case, including the reasonableness of the invoice of NPS destruction. Said informal administrative review shall be conducted within ten (10) days after the request is made. At the informal administrative review, subpoena power shall not be available, and no record shall be made of the proceedings. The rules of evidence shall not apply. The reviewing officer's decision shall be in writing, and it shall be delivered to the parties by certified mail.

If any party is aggrieved by the order of the reviewing officer, he may request a full evidentiary hearing before the hearing committee in accordance with the procedures in Miss. Code of 1972, §69-25-51 and 69-25-53. The request for an evidentiary hearing must be made with the department within thirty (30) days of receipt of the decision of the reviewing officer. Failure to request an evidentiary hearing within the thirty (30) days is deemed a waiver of such right. If any party is aggrieved by the decision of the hearing committee, he shall have the right of judicial review in circuit court and in the Supreme Court as provided in Miss. Code of 1972, §69-25-59.

141.05 EXEMPTIONS. An NPS permit is not required for the following plants or groups of plants:

- a. Any plant that is produced for purposes of human food consumption.
- b. Any plant this is commonly grown for commercial feed, feedstuff or forage for livestock
- c. *Pinus* spp.
- d. Any plant species which, upon extensive review by the department along with Mississippi State University Specialists and supported by experience in the field, has been determined by the department to not pose a threat of invasiveness.

Adopted: _____, 2012

Source: Miss. Code of 1972, §69-25-10