

Subpart 3-Bureau of Plant Industry
Chapter 09-Pesticide Application Law
Subchapter 01- Regulations Governing the Certification of Private Applicators To Use
“Restricted Use” Pesticides.

Definitions

- 100 For the purpose of these regulations, the following words, names and terms shall be construed within the meaning and purpose of *Miss. Code Ann.* Sections 69-23-101 through 69-23-133.
1. "Advisory Board" shall mean the Advisory Board as defined in Section 69-25-3.
 2. "Agricultural Commodity" shall mean any plant, or part thereof, animal or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animal.
 3. "Applicant" shall mean an individual who submits an application for certification as a private applicator.
 4. "Bureau" shall mean the Bureau of Plant Industry, Mississippi Department of Agriculture and Commerce, created under the provisions of *Miss. Code Ann.* Section 69-25-3.
 5. "Certificate" shall mean a license or permit.
 6. "Certification" shall mean the recognition by the Bureau that a person is competent and thus authorized to use or supervise the use of "restricted use" pesticides.
 7. "Certified Private Applicator" shall mean any individual who has been found competent to purchase and use "restricted use" pesticides covered by his certification.
 8. "Commissioner" shall mean the Commissioner of Agriculture and Commerce of the State of Mississippi.
 9. "EPA" shall mean the United States Environmental Protection Agency.
 10. "Executive Secretary and/or State Entomologist" shall mean the executive secretary and director and/or state entomologist of the Bureau of Plant Industry, Mississippi Department of Agriculture and Commerce as set forth in *Miss. Code Ann.* Section 69-25-5.
 11. "FIFRA" shall mean the Federal Insecticide, Fungicide, and Rodenticide Act, as amended.
 12. "Person" shall mean any individual, partnership, association, corporation or organized group of persons, whether incorporated or not.
 13. "Pest" shall mean:
 - a. Any insects, rodents, nematodes, fungi and/or weeds;
 - b. Other forms of terrestrial or aquatic plant or animal life or viruses, or viroids, bacteria, or other microorganism (except viruses, bacteria or other microorganism on or in living man or other living animals) which the Commissioner declares to be a pest.

14. "Pesticide" shall mean any substance or mixture of substances intended for preventing, destroying, repelling, mitigating or attracting any pests; and shall also include adjuvants intended to enhance the effectiveness of pesticides; and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.
15. "Private Applicator" shall mean a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.
16. "Restricted Use Pesticide" shall mean any pesticide classified for restricted use by EPA or by the Commissioner.
17. "Under the Direct Supervision of" shall mean the act or process whereby application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person and who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.
18. "Unreasonable Adverse Effects on the Environment" shall mean any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

Source: *Miss. Code Ann.* §69-23-109.

Persons Required To Be Certified

- 101 Any person who uses or supervises the use of any "restricted use" pesticide for the purpose of producing an agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person shall be certified as a private applicator.

Source: *Miss. Code Ann.* §69-23-109.

Certification Application; Qualifications

- 102.01 Application for certification shall be submitted on a regular form furnished by the Bureau.
- 102.02 Persons who wish to be certified as private pesticide applicators must be 18 years old prior to participating in a certification option. In hardship cases individuals below the age of 18 may be certified by the Board on an individual basis when they demonstrate to the Board by written, or written and oral examination their qualifications as a private pesticide applicator.

102.03 Persons who wish to be certified as private pesticide applicators must verify that they are actively engaged in farming in the State of Mississippi and will use the pesticides purchased under this certification in the production of agricultural commodities.

Source: *Miss. Code Ann.* §69-23-109.

Certification Methods

103.01 Training with examination. Competence in the use and handling of pesticides shall be determined by written examination. This examination will be based upon standards as set forth in the U.S. Environmental Protection Agency's Code of Federal Regulations.

103.02 Examination without training. An Applicant may request and be allowed to take an examination provided by the Bureau for certification. If he satisfactorily passes the examination, he will be certified.

Source: *Miss. Code Ann.* §69-23-109.

Records

104 Applicators certified under this regulation shall keep complete and accurate records of all work performed for at least two years. Such records shall be available for examination by employees of the Bureau during reasonable business hours. Such records shall include:

1. The brand or product name;
2. The EPA registration number;
3. Total amount applied;
4. The size of the area treated;
5. The crop, commodity, stored product or site;
6. The date of the application; and
7. The location of application.

Source: *Miss. Code Ann.* §69-23-109.

Issuance of Certificate

105 If all qualifications and other requirements of the applicant are satisfactory, the Bureau shall issue a certificate. A certificate must be presented to the dealer when purchasing a "restricted use" pesticide.

Source: *Miss. Code Ann.* §69-23-109.

Invalidation of a Certificate

- 106 The Commissioner with the approval of the advisory board may suspend for not more than thirty (30) days, and then after opportunity for a hearing may deny, suspend, revoke or modify the provisions of any certificate or permit issued under the act if he finds that the applicant or licensee had committed any of the following:
1. Made false or fraudulent claims through any media misrepresenting the effect of materials or methods to be used;
 2. Operated in a faulty, careless or negligent manner or knowingly operated faulty or unsafe equipment in a manner as to cause damage to property or person;
 3. Refused, or after notice neglected to comply with the provisions of the act, these regulations, or any lawful order of the Commissioner;
 4. Used fraud or misrepresentation in making application for a certificate or renewal of a certificate;
 5. Aided or abetted any person in evading the provisions of the act, allowed one's certificate to be used by an uncertified person;
 6. Impersonated any state or federal official;
 7. Convicted of a violation under FIFRA; or
 8. Convicted for using any restricted use pesticide in a manner which is determined to be inconsistent with its label or labeling.

Source: *Miss. Code Ann.* §69-23-109.

Renewal of Certification

- 107 All certificates shall be renewed every five (5) years. The certified applicator must complete one of the certification methods in Section 103 of this chapter within the past twelve (12) months in order for it to be renewed.

Source: *Miss. Code Ann.* §69-23-109.

Enforcement

- 108 For the purpose of carrying out the provisions of this article the Commissioner or his employees may enter upon any public or private premises at reasonable times in order to have access for the purpose of inspection, sampling, and observation subject to this article.

Source: *Miss. Code Ann.* §69-23-109.

Penalties

- 109 Any person violating the provisions of the act or these regulations shall be guilty of a misdemeanor, and upon conviction shall be punishable by a fine or imprisonment as provided for in the Mississippi Pesticide Law and/or the Mississippi Pesticide Application Law.

Source: *Miss. Code Ann.* §69-23-109.

Reciprocity

- 110 The examination for certification may be waived if one of the following conditions are met:
The applicant is already certified in a state with standards equal to those of Mississippi.
A federal employee presents a federal form stating that he or she is competent and certified under the governmental agency plan.

Source: *Miss. Code Ann.* §69-23-109.

Exemptions

111.01 Any person duly licensed and certified under *Miss. Code Ann.* Sections 69-19-1 through 69-19-11, Sections 69-21-1 through 69-21-27, and Sections 69-21-101 through 69-21-125 is exempt from the certification provisions of these regulations.

111.02 Persons exempt from certification requirements by federal regulations promulgated under FIFRA are exempted from certification under these regulations.

(Subchapter 02-Adopted March 25, 1976; Amended June 27, 1997)

Source: *Miss. Code Ann.* §69-23-109.

Subpart 3-Bureau of Plant Industry
Chapter 09-Pesticide Application Law
Subchapter 02-Regulations Governing Certified Applicators Who Are Not Required By
Other Mississippi Laws And Regulations To Be Licensed Or Certified

Definitions

- 200 For the purpose of these regulations, the following words, names and terms shall be construed within the meaning and purpose of *Miss. Code Ann.* Sections 69-23-101 through 69-23-133
1. “Act” shall mean *Miss. Code Ann.* Sections 69-23-101 through 69-23-133.
 2. “Bureau” shall mean the Bureau of Plant Industry of the Mississippi Department of Agriculture and Commerce created under the provisions of *Miss. Code Ann.* Section 69-25-3.
 3. “Certificate” shall mean a document issued by the Bureau indicating that a person is competent to use or supervise the use of a restricted-use pesticide under the categories listed on said document.
 4. “Certification” shall mean the recognition by a certifying agency that a person is competent and thus authorized to use or supervise the use of a restricted-use pesticide.
 5. “Certified Applicator” shall mean any person who is certified to use or supervise the use of a restricted-use pesticide covered by certification.
 6. “Commissioner” shall mean the Commissioner of the Mississippi Department of Agriculture and Commerce.
 7. “Competent” shall mean properly qualified to perform functions associated with pesticide application, with the degree of capability required being directly related to the nature of the activity and the associated responsibility.
 8. “Person” shall mean any individual, partnership, corporation, association, company or organized group of individuals whether incorporated or not.
 9. “Public Applicator” shall mean any person who applies a restricted-use pesticide as an employee of a state agency, municipal corporation, public utility or other governmental agency. This term does not include employees who work under direct “on-the-job” supervision of a public applicator.
 10. “Restricted-Use Pesticide” shall mean any pesticide classified for restricted use by the U.S. Environmental Protection Agency or by the Commissioner.
 11. “Under the Direct Supervision of” shall mean the act or process whereby application of a pesticide is made by a competent person acting under the instruction and control of a certified applicator who is responsible for the actions of that person and who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

Source: *Miss. Code Ann.* §69-23-109.

Persons Required To Be Certified

201 All persons engaging in the supervision, application or use of any pesticide that is restricted by the U.S. Environmental Protection Agency or the Bureau are required to be certified unless exempt in Section 211 of this chapter.

Source: *Miss. Code Ann.* §69-23-109.

Certification Application

202 Application for certification shall be submitted on a regular form furnished by the Bureau. All applicants must be at least eighteen (18) years of age.

Source: *Miss. Code Ann.* §69-23-109.

Exemptions and Categories

203.01 Competence in the use and handling of pesticides shall be determined by written examinations. These examinations will be based upon standards as set forth in the U.S. Environmental Protection Agency's Code of Federal Regulations.

203.02 Examination dates and locations shall be specified by the Bureau of Plant Industry, Mississippi State, Mississippi.

203.03 Categories in which examinations are to be given for certification:

1. Agricultural Plant and Animal Pest Control
2. Forest Pest Control
3. Ornamental and Turf Pest Control
4. Seed Treatment
5. Aquatic Pest Control
6. Right-of-Way Pest Control
7. Industrial, Institutional, Structural and Health-Related Pest Control
8. Public Health Pest Control
9. Regulatory Pest Control
10. Demonstration and Research Pest Control
11. Aerial Application
12. Wood Preservation and Products Treatment
13. Antifoulant Paint
14. Metam-Sodium

Source: *Miss. Code Ann.* §69-23-109.

Certification

204 After all requirements have been met by the applicant, said applicant will then be certified by the Bureau. If the certified applicator changes their mailing address, the Bureau must be notified in writing.

Source: *Miss. Code Ann.* §69-23-109.

Denial; Suspension; Revocation; and Modification

- 205.01 The Commissioner with the approval of the advisory board may suspend for not more than thirty (30) days, and then after opportunity for a hearing, may deny, suspend, revoke or modify the certification issued under the act if it is determined that the applicant has committed any of the following offenses, each of which is declared to be a violation of this act:
1. Made false or fraudulent claims through any media misrepresenting the effect of materials or methods to be used.
 2. Operated in a faulty, careless or negligent manner or knowingly operated faulty or unsafe equipment in a manner as to cause damage to property or people.
 3. Refused or after notice neglected to comply with the provisions of this act, the regulations adopted hereunder or any lawful order of the Commissioner.
 4. Refused or neglected to keep and maintain records required by this act or to make reports when required.
 5. Made false or fraudulent records, invoices or reports.
 6. Used fraud or misrepresentation in making application for certification or renewal for certification.
 7. Aided or abetted any person in evading the provisions of this act or allowed one's certification to be used by an uncertified person.
 8. Impersonated any state or federal official.
 9. Convicted of a violation under the Federal Insecticide, Fungicide and Rodenticide Act.
 10. Convicted for using any restricted-use pesticide in a manner which is determined to be inconsistent with its labeling.
- 205.02 Any person who is denied certification or when certification is suspended, revoked or modified by the Commissioner shall be afforded an opportunity for a fair hearing before the advisory board in connection therewith upon written application to the Commissioner within thirty (30) days after receipt of notice from the Commissioner of such denial, suspension, revocation or modification. The Commissioner shall set a time and place for such hearing and shall convene the board within ten (10) days following receipt of the written application for a hearing. The board shall receive evidence and affirm, modify or reverse the determination of the Commissioner within five (5) days.
- 205.03 Any person aggrieved by the determination of the board may petition the chancery court of the county of residence of such person or the Chancery Court of Hinds County for a review with supersedes. The chancellor shall grant a hearing on said petition and may grant such review with supersedes; the appellant may be required to post bond with sufficient sureties in an amount to be determined by

the chancellor. Upon the review of any such decision, additional evidence may be received and considered, but any record made or evidence heard before the board or Commissioner may be submitted. Any such petition by either party from the determination of the chancellor shall proceed as otherwise provided by law.

205.04 When certification has been revoked, said person shall be notified by certified mail.

Source: *Miss. Code Ann.* §69-23-109.

Reporting

206 Applicators certified under this regulation shall keep complete and accurate records of all work performed for at least two years. Such records shall be available for examination by employees of the Bureau during reasonable business hours. Such records shall include location, type of service performed, date performed, chemical used if any, strength, amount, pest controlled and such other information as may be necessary for a complete record.

Source: *Miss. Code Ann.* §69-23-109.

Nonresident Commercial Applicators To Designate Secretary of State As Agent For Service of Process

207 Any nonresident commercial applicator applying for a license under the act to operate in the state shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and such power of attorney shall be prepared and in such form as to render effective the jurisdiction of the courts of this state over such nonresident applicant. Provided, however, that any such nonresident who has a duly appointed resident agent upon whom process may be served as provided by law shall not be required to designate the secretary of state as such agent. The secretary of state shall be allowed such fees therefore as provided by law for designating resident agents. The Commissioner shall be furnished with a copy of such designation of the secretary of state or of a resident agent, such copy to be duly certified by the secretary of state.

Source: *Miss. Code Ann.* §69-23-109.

Issuance of a Certificate

208 After all requirements have been met by the applicant for certification, the Bureau shall then issue said applicant a certificate. Said certificate shall indicate the category or categories under which said applicant is certified. A certificate is not transferable.

Source: *Miss. Code Ann.* §69-23-109.

Certification, Expiration and Conditions For Renewal.

209 A certified applicator's certification shall expire thirty-six (36) months from the date that the certificate was issued. To renew the certificate, the certified applicator must submit a request for renewal on a form prescribed by the Bureau and show knowledge of current control recommendations, techniques, and changing technology and pesticide usage. To meet these requirements, the certified applicator must have attended a training course within the past twelve (12) months that is approved by the Bureau or successfully complete an examination administered by the Bureau.

Source: *Miss. Code Ann.* §69-23-109.

Reciprocity

210 The examination for certification may be waived if one of the following conditions are met:

1. The applicant is already certified to perform the same professional services in a state with standards equal to those of Mississippi.
2. A federal employee presents a federal form stating that he or she is competent and certified under the governmental agency plan.

Source: *Miss. Code Ann.* §69-23-109.

Exemptions

211.01 Persons conducting laboratory type research involving restricted-use pesticides, and doctors of medicine and doctors of veterinary medicine applying pesticides as drugs or medication during the course of their normal practice are exempt from the certifying provisions of this regulation.

211.02 Public applicators are exempt from requirements set forth in Section 207 of this chapter.

Subchapter 02-Adopted March 25, 1976; amended December 14, 1984; June 27, 1997)

Source: *Miss. Code Ann.* §69-23-109.