TITLE 30-PROFESSIONS AND OCCUPATIONS

PART I MISSISSIPPI STATE BOARD OF AGRICULTURAL AVIATION

Chapter 01 Method of Operation and Procedures

Section 100

Scope. Chapter 01 of these Rules is promulgated pursuant to Miss. Code Ann. § 25-43-2.104 as amended

200 Description of Mississippi State Board of Agricultural Aviation (hereinafter AAB)

201 The public may obtain a description of the AAB'S organization from the Rules and Regulations of the AAB currently on file with the Secretary of State (SOS). Additionally, the public may access information relevant to the description of the organization and it's general course and method of its operations at their website www.aab.state.ms.us, or by reviewing Sections 69-21-101 et seq., of the Mississippi Code of 1972, as amended, which may be accessed at www.state.ms.us. The public may also request information, make submissions or requests including Mississippi Open Records Act requests by contacting the AAB at 208 N. Dunn Street, Eupora, MS, 39744, (662) 258-3474.

202 All information as to the rules of practice concerning all formal and informal proceedings are available by reviewing the rules and regulations of the AAB currently on file with the Secretary of State (SOS). Further information may be obtained by reviewing the AAB website at www.aab.state.ms.us, or by reviewing Sections 69-21-101 et seq., of the Mississippi Code of 1972 as amended which may be accessed at www.state.ms.us.

203 The AAB generally meets the 2nd Wednesday of each quarter at 9:00 A.M. at the Mississippi Department of Environmental Quality, 2380 Highway 80 West, Jackson, MS 39204. Other meetings may be called by the Board as necessary.

Chapter 02 Public Hearings

Section 100

Scope. Chapter 02 of these Rules is promulgated pursuant to Miss. Code Ann. § 25-433.104 as amended and sets forth AAB'S procedures for involving the public in the development of rules through public meetings and/or public hearings as required by Mississippi Code Ann. § 25-43-3.104 as amended.

200 Requirements for Public Hearings

201 At the time a rule is filed with the SOS, the AAB staff must publish notice where written submissions or written requests for an opportunity to make oral presentations on the proposed rule may be submitted.

202 A public hearing is required if, during the first 20 business days of the rule notice, a written request for a public hearing is received from one of the following:

202.01 a political subdivision

202.02 an agency, or

202.03 10 persons

203 If a public hearing is required, the AAB staff will establish the time, date and location for the public hearing. The AAB staff shall then:

203.01 Ensure that the public hearing is not scheduled earlier than 23 business days after filing notice of oral proceeding with AAB staff.

203.02 File notice of the time, date, and location of the public hearing with the SOS.

203.03 Within three (3) days of filing notice with SOS, AAB staff must mail a copy of the notice to those who are on the notification list.

300 Conducting Public Hearings

300.01 Public hearings must be open to the public.

300.02 The presiding officer designated by AAB will preside at the proceeding.

400 Availability of Public Hearing Proceedings

400.01 A verbatim written transcript of the oral proceedings at each public hearing shall be produced.

Chapter 03 Declaratory Opinions

Section 100

Scope. Chapter 03 of these Rules is promulgated pursuant to Miss. Code Ann. § 25-43-2.103(2) as amended and is intended to set forth the AAB'S procedures regarding requests for declaratory opinions.

200 Persons Who May Request Declaratory Opinions

201 Any person with a substantial interest in the subject matter may request the AAB for a declaratory opinion.

300 Subjects Which May Be Addressed In Declaratory Opinions

300.01 The AAB will issue declaratory opinions regarding the applicability to specified facts of:

300.01(1) A statue administered or enforceable by the AAB,

300.01(2) A rule promulgated by the AAB, or

300.01(3) An order issued by the AAB.

300.02 The AAB will not issue a declaratory opinion regarding a statute, rule or order which is beyond the primary jurisdiction of the AAB.

400 Circumstances in which Declaratory Opinions Will Not Be Issued

400.01 The AAB may, for good cause, refuse to issue a declaratory opinion. Without limiting the generality of the foregoing, the circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

400.01(1) The matter is outside the jurisdiction of the AAB;

400.01(2) Lack of clarity concerning the question presented;

400.01(3) There is pending or anticipated litigation, administrative action, or other adjudication;

400.01(4) 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;

400.01(5) The facts presented in the request are not sufficient to answer the question presented;

400.01(6) The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;

400.01(7) 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, statue or order on which a declaratory opinion is sought;

400.01(8) 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, rule, or order;

400.01(9) The question presented by the request concerns the legal or constitutional validity of a statute, rule or order;

400.01(10) The requestor has not suffered an injury or threatened injury fairly traceable to the application of the statute, rule or order;

400.01(11) No clear answer is determinable;

400.01(12) The question presented by the request involves the application of a criminal statute or sets for facts which may constitute a crime;

400.01(13) The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;

400.01(14) The question is currently the subject of an Attorney General's opinion request;

400.01(15) The question has been answered by an Attorney General's opinion;

400.01(16) The request is not made in good faith; or

400.01(17) The request is harassing in nature or for any other unlawful purposes.

400.02 A declaratory opinion will not be issued where 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.

400.03 A declaratory opinion will not be issued if it may adversely affect the interests of the State, the AAB or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise.

400.04 Where a request for a declaratory opinion involves a question of law, the AAB may refer the matter to the State Attorney General.

500 Form of the Request for a Declaratory Opinion

500.01 Written Requests Required. Each request must be printed or typewritten, or must be in legible handwriting. Requests may be in the form of a letter addressed to the AAB or in the form of a pleading as might be addressed to a court.

500.02 Where to Send Request: All requests must be mailed or delivered to the AAB, 208 N. Dunn Street, Eupora, MS 39744. The request and its envelope shall clearly state that it is a request for a declaratory opinion. Oral and telephone requests are unacceptable.

500.03 Name, Address and Signature of Requestor. 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, unless represented by an attorney, in which case the attorney may sign the request. The signing party 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.

500.04 Single transaction. A request must be limited to a single transaction or occurrence.

500.05 Question Presented. Each request shall contain the following:

500.05(1) A clear identification of the statute, rule, or order at issue;

500.05(2) A concise statement of the issue or question presented for the declaratory opinion;

500.05(3) A full, complete, and accurate statement of all facts relevant to a resolution of the question presented;

500.05(4) The identify all other known persons involved in or impacted by the factual situation causing the request including their relationship to the facts; name, mailing address and telephone number;

500.01(5) A statement sufficient to show that the person seeking relief is substantially affected by the rule.

500.06 The terms of the proposed opinion suggested by the requestor may be submitted with the request or may be requested by the agency.

600 Time for AAB 's Response

600.01 AAB's 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 AAB shall in writing:

600.01(1) Issue an opinion declaring the applicability of the specified statute, rule, or order to the specified circumstances;

600.01(2) Decline to issue a declaratory opinion, stating the reasons for its action; or

600.01(3) Agree to issue a declaratory opinion or a written statement declining to issue a declaratory opinion by a specified time but no later than ninety (90) days after receipt of the written request.

600.02 When Period Begins to Run. The forty-five (45) day period shall begin running on the first State of Mississippi business day that the request is received in the AAB offices.

700 Public Availability of Requests and Declaratory Opinions

700.01 The AAB staff will make declaratory opinions and requests for declaratory opinions 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 and subject. Declaratory opinions and requests which contain information which is exempted from disclosure under the Mississippi Public Records Act or is otherwise confidential by law shall be exempt from this requirement.

800 Effect of Declaratory Opinions

800.01 The AAB will not pursue any civil, criminal, or administrative action against a person who is issued a declaratory opinion and who, in good faith, follows the direction given in the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong and without any substantial support. Any declaratory opinion rendered by the AAB shall be binding only on the AAB 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 of facts described in the original request.

Chapter 04 Availability of AAB Orders

Section 100

Scope. Chapter 04 of these Rules is promulgated pursuant to Miss. Code Ann. § 25-42-2.102 as amended and sets forth the procedures for making AAB Orders available to the public.

200 General. The AAB staff will be responsible for making AAB Orders available for public inspection and copying, indexed by name and subject. This is subject to any confidentiality provisions established by law.

300 Using AAB Orders as Precedent

300.01 The written final Order can't be used as precedent to the detriment of any person by the AAB until it has been made available for public inspection, indexed by name and subject.

300.01(1) This is inapplicable to any person who has actual timely knowledge of the Order.

300.01(2) The burden of proof is on the AAB.

Chapter 05 Regulations Governing Registration and Licensing of Agricultural Aviation Aircraft

Section 100 Applicability

100.01 These regulations are adopted pursuant to the mandates of Miss. Code Ann. Section 69-21-101 *et seq*. as amended and apply to all activities related to the aerial application of non-hormonal agricultural pesticides and fertilizers, seeds, and other chemicals in

Mississippi. All persons engaged in such activities must comply with these regulations.

Section 101 Definitions

101.01 As used in these regulations, the following terms shall have the meanings hereinafter ascribed to them:

101.02 "Aerial application" means the practice of engaging in agricultural aircraft operations for remuneration.

101.03 "Agricultural aircraft operation" means:

101.03(1) Dispensing any pesticide, seed or fertilizer by aircraft;

101.03(2) Dispensing any other substance intended for plant nourishment, soil treatment, propagation of plant life, or pest control by aircraft, or

101.03(3) Engaging in dispensing activities directly affecting agriculture, horticulture, or forest preservation by aircraft.

101.04 "Aircraft" means any contrivance now known or hereafter invented that is used or designed for navigation of or flight in the air over land and water, and that is designed for or adaptable for use in agricultural aircraft operation.

101.05 "Applicator" means any person, as herein defined, who is licensed under this article to engage in agricultural aircraft operations.

101.06 "Board" shall mean the Mississippi State Board of Agricultural Aviation.

101.07 "Chief Pilot" means the person designated by an applicator to serve as chief pilot and the supervisor of agricultural aircraft operations for an applicator.

101.08 "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

101.09 "Desiccant" means any substances or mixtures of substances intended for artificially accelerating the drying of plant tissues.

101.10 "Herbicide" means a chemical used for killing plants or severely interrupting their normal growth processes.

101.11 "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the Class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs and flies; and to other classes of arthropods whose members are wingless and usually have more than six (6) legs, as for example, spiders, mites, ticks, centipedes and wood lice.

101.12 "Person" shall mean any individual, corporation, firm, partnership, company, trust, association or other legal entity.

101.13 "Pesticide" means any substance or mixture of substances, except as set forth in Section 69-21-111, intended for defoliating or desiccating plants, or for preventing, destroying, repelling or mitigating any insects, fungi, bacteria, weeds, or other forms of plant or animal life which the Board shall declare to be a pest.

101.14 "Pilot" means the operator of an aircraft used in agricultural aircraft operation; provided, however, a pilot may also be a person who is licensed as an applicator under the provisions of this article.

101.15 "Staff" means any employee or designee of the Board.

Section 102 Initial Application for a License

102.01 Applicator - Any person, firm or corporation who intends to conduct, or engage in the practice of aerial application, as defined above, in the State of Mississippi shall first make application for a license to the Board on a form prescribed by the Board's staff, and said applicant shall:

102.01(1) Designate the name under which the applicant will do business;

102.01(2) Designate a person who will serve as chief pilot, as required by Section 103.01(1);

102.01(3) Furnish proof of registration with the Federal Aviation Administration (FAA) under FAR Part 137;

102.01(4) List all aircraft by make, model, and N number to be used with current licensure;

102.01(5) Either pass a written examination administered by the Board or furnish proof of certification in accordance with Section 103.01(2);

102.01(6) Submit proof of payment of all ad valorem and other taxes which might be applicable on aircraft and other equipment to be used;

102.01(7) List all pilots with current licensure, and rating;

102.01(8) Submit proof of financial responsibility as outlined in Section 104;

102.01(9) Establish proof of residency in accordance with Section 105 or appoint a resident agent for service of process in accordance with Section 106;

102.01(10) File a resume of intended operation or activity; and

102.01(11) Register all aircraft and pilots in accordance with Section 108;

102.01(12) Submit a copy of a photographic identification card.

102.02 Pilot - Each person who intends to operate an aircraft engaged in agricultural aircraft operations in or over the State of Mississippi shall first make application for and obtain a pilot's license from the Board, on a form prescribed by the Board's staff for that purpose. Said application shall contain:

102.02(1) The name of the pilot;

102.02(2) The name of the firm for which the person will act as a pilot;

102.02(3) The pilot's FAA Commercial License Number, rating and date of medical which must be current;

102.02(4) A resume of experience; and

102.02(5) The method to be used to meet the competency requirements;

102.02(6) Submit a copy of a photographic identification card.

Section 103. Initial Licensing Requirements

103.01 Applicator - Each applicant for a license to act as an applicator to conduct agricultural aircraft operations shall:

103.01(1) Designate a person who meets the requirements of Section 103.03 to serve as chief pilot and supervisor of operations, which may be the applicant, or some other person;

103.01(2) The applicator or their designated agent must demonstrate competency by passing a written examination administered by the Board's staff. The examination will cover aerial application methods and procedures in general, and include the standards for certification of applicators as set forth in Code of Federal Regulations, Chapter 40, Section 171.4 (40 CFR§ 171.4) . The examination may be waived if the applicant is currently licensed to conduct agricultural aircraft operations in a state with standards equal to those of Mississippi and provided that said state recognizes such examinations given by Mississippi;

103.01(3) Have available the services of at least one aircraft registered by the Board in accordance with Section 108.01 and one pilot currently licensed by the Board in accordance with Section 108.02;

103.01(4) Hold a current agricultural aircraft operator's certificate from FAA under FAR Part 137;

103.01(5) Submit proof of financial responsibility to the Board, and upon obtaining a license, such person shall maintain proof of financial responsibility at all times while such license is in effect, in accordance with Section 104;

103.01(6) Provide proof of payment of all ad valorem and other taxes, which might be applicable on aircraft and other equipment.

103.01(7) Establish proof of residency in accordance with Section 105 or appoint a resident agent for service of process in accordance with Section 106; and

103.01(8) Register with the Board all aircraft and pilots used in agricultural aircraft operations in Mississippi.

103.02 Pilots - Each applicant for a license to act as a pilot shall:

103.02(1) Demonstrate competency by passing a written examination administered by the Board's staff or submit proof of certification from another state;

103.02(2) Hold a current commercial or airline transport pilot certificate from FAA;and

103.02(3) Have current medical date and rating for type of aircraft to be operated.

103.03 Chief Pilot - Each person who is designated a chief pilot shall:

103.03(1) Have at least 500 hours of commercial agricultural aerial application flying time as pilot-in-command, and two years experience either as a chief pilot or under the direct supervision of a chief pilot in accordance with FAR 137 and in accordance with governing state laws in the state or states where the experience was gained, and be able to show proof thereof. Proof of experience may consist of a notarized affidavit from one of the following persons who has personal knowledge of the designee's experience: another applicator, a state or federal regulatory official, or an officer of a State or National Agricultural Aviation Association, or any other person as may be acceptable to the Board;

103.03(2) Hold a current commercial or airline transport pilot certificate from FAA;

103.03(3) Hold/possess a Current Second (2d) Class medical. If an applicator that is also the owner serving as chief pilot loses his or her second class medical, he or she may continue to serve as chief pilot of said operation as long as he or she maintains good standing with the Board;

103.03(4) Submit proof from FAA that the person has met the knowledge and skill tests requirement and is competent to serve as chief pilot in accordance with FAR 137;

103.03(5) Pass a written examination administered by the Board's staff;

103.03(6) Make regular checks on operation and record keeping to assure compliance; and

103.03(7) Instruct each pilot and ascertain that he or she is knowledgeable of the responsibilities for compliance with all state and federal regulations pertaining to agricultural aircraft operations.

Section 104 Financial Responsibility

104.01 Each applicant for a license as an applicator in Mississippi shall submit proof of financial responsibility to the Board, and upon obtaining a license, such person shall maintain proof of financial responsibility at all times while such license is in effect.

104.02 The minimum amount of financial responsibility required for each licensed applicator is:
$100,000 Bodily injury for any one person;
$300,000 Bodily injury for any one occurrence, and $100,000
Property damage for any one occurrence for each aircraft registered.

104.03 Proof of financial responsibility may consist of:

104.03(1) The deposit with the Board of a surety bond in favor of any person or persons who may suffer damage by reason of the operation of an aerial application service, issued by a corporate surety company authorized to do business in this state, which surety bond shall be in an amount not less than the amounts of financial responsibility required by Section 104.02 of this regulation. However, the aggregate liability of the surety to all such persons shall not, in any event, exceed the amount of such bond.

104.03(2) The filing of an insurance policy of an insuror or surplus line broker authorized to do business in this state insuring the licensee and any of his agents against liability resulting from the operation of an aerial application service, which insurance policy shall be in the minimum amount of $100,000 for bodily injury for any one person with $300,000 minimum for any one occurrence and $100,000 for property damage for any one occurrence for each aircraft registered with the Board.

104.03(3) Such other instrument as the Board may determine appropriate, so long as the Board determines that such instrument provides assurance of financial responsibility not less than the amounts of financial responsibility required by Section 104.02 of this regulation.

Section 105 Proof of Residency

105.01 Resident applicators must establish proof of residency in the State of Mississippi. Proof of residency may be established by any one of the following:

105.02 A statement from the local circuit clerk certifying that the applicant is a qualified elector in that county.

105.03 A statement from the local tax assessor certifying that the applicant filed for homestead exemption for the current year.

105.04 A statement from the local sheriff certifying that the applicant owns, and regularly pays taxes on, real or personal property in his home county. If proof of residency cannot be established, it will be necessary for the applicant to appoint a resident agent as outlined for non-resident applicants in Section 106 of this regulation.

105.05 Any other proof of residency as may be required by the Board.

Section 106 Licensing of Non-Resident Applicators

106.01 Any person who is a non-resident of this state shall obtain an applicator's license from the Board before operating as an applicator in Mississippi. In addition to obtaining an applicator's license, non-resident applicators shall:

106.01(1) Designate and maintain a resident agent in Mississippi for service of process. The power of attorney appointing such resident agent shall be in such form as to render effective the jurisdiction of the courts of the State of Mississippi over such non-resident and make such licensee amenable to the jurisdiction of the courts of Mississippi. The resident agent may be the Secretary of State, or any other duly appointed resident agent upon whom process may be served. A copy of the power of attorney must be certified through the office of the Secretary of State and filed with the Board. Power of attorney forms for appointing a resident process agent will be furnished by the Board's staff.

106.01(2) Establish and maintain proof of financial responsibility as outlined in Section 104

106.01(3) Provide proof of payment of all ad valorem and other taxes, which might be applicable on aircraft and other equipment.

Section 107 Inspection of Agricultural Aircraft Operation

107.01 One or more Board members or any of its employees and/or any employee of another Mississippi state agency with which the Board has a memorandum of understanding or agreement regarding the conduct of business on behalf of the Board may inspect any agricultural aircraft operation, including aircraft and equipment, records, licenses, and related items, during normal business hours except in times of emergencies and may obtain and procure samples of materials in order to determine if the operation is in compliance with these regulations.

Section 108 Fees for Licenses

108.01 A fee, as set by the Board, of One Hundred Fifty ($150) dollars for each aircraft owned,

operated, used and employed in aerial application by an applicator shall be paid to the Board for the issuance or required annual renewal of a license for an applicator. Each aircraft shall be identified at all times by a decal supplied to the registered applicator by the Board.

108.02 A fee, as set by the Board, of One Hundred Fifty ($150) dollars for each pilot engaged in aerial application shall be paid to the Board for the issuance or required annual renewal of a license for a pilot. Each pilot shall have in his possession at all times an identification card supplied by the Board.

Section 109 Issuance of Licenses

109.01 Upon receipt and approval of an application with appropriate related documents and payment of the applicable fees, the Board's staff shall issue licenses as follows:

109.02 Each applicator shall be issued a license as an applicator to conduct agricultural aircraft operations in Mississippi in accordance with and subject to the provisions of the Act and the regulations adopted by the Board.

109.03 Each aircraft shall be identified at all times by a decal supplied to the applicator by the Board.

109.04 Each pilot shall be issued a license, which will also serve as an identification card, identifying him or her as a registered pilot and/or chief pilot as the case may be. Each pilot shall have this card in his or her possession at all times when engaged in aerial application activities.

109.05 All licenses shall expire on the 31st of March of the year following their issuance and shall be renewed for the ensuing year on or before that date.

Section 110 Additional Aircraft and Pilots, Deletions, and Transfers

110.01 Licensed applicators may add or delete aircraft and pilots, or transfer the registration fee to substitute aircraft, at any time during the license period as follows:

110.02 Additional aircraft may be added by filing a form to register additional aircraft, paying the applicable registration fee, and submitting proof of financial responsibility coverage.

110.03 Aircraft may be deleted by notifying the Board's staff.

110.04 The registration fee for a deleted aircraft may be transferred to a substitute or replacement aircraft by requesting such transfer on a form prepared for that purpose and paying a transfer fee of $10.00 for a new decal for the substitute or replacement aircraft.

110.05 The registration fee and decal for an aircraft may be transferred to a new owner by

requesting such transfer on a form prepared for that purpose and paying a transfer fee of $10.00, provided the new owner is a currently registered applicator. The registration fee and decal cannot be transferred to a person who is not a currently registered applicator.

110.06 Additional pilots may be added by filing a request with the Board on a form prepared for that purpose, provided that the pilot is currently licensed and registered with the Board. If the pilot does not hold a current license from the Board, the form for adding additional pilots must be accompanied by an application for a pilot's license as outlined in Section 102.02, along with the documentary evidence of compliance and the appropriate fee.

110.07 A new chief pilot may be designated at any time by filing a request with the Board on a form prepared for that purpose, provided the new chief pilot is currently approved by the Board's staff to serve in that capacity. The form for a new chief pilot must be accompanied by proof that the new chief pilot is approved by FAA to serve as chief pilot for the applicator, as provided in Section 103.03 If the new chief pilot is not currently approved by the Board's staff to serve in that capacity, the form must be accompanied by all the documentary evidence listed in Section 103.03.

110.08 If an applicator's chief pilot were to lose his or her second (2ND) class medical he or she would have a period of twelve (12) months to obtain a current second (2ND) class medical or the applicator would designate a new chief pilot per Section 110.07.

Section 111 Renewal of Licenses

111.01 Licenses shall be effective for a period of one (1) year. Any licensee wishing to have a license renewed must submit an application for renewal with the Board no later than ninety (90) days before the expiration of the license. If the applicant submits a timely and complete application for renewal, and the Board's staff, through no fault of the applicant, fails to reissue the license on or before the expiration date of the existing license, the existing license shall remain in effect until final action on the renewal application is taken by the Board's staff. Licenses are subject to modification, revocation or reissuance for cause at any time during the effective dates of the license.

111.02 Licenses may be renewed by filing an application for renewal prepared for that purpose. The application for renewal shall be accompanied by the following:

111.02(1) Payment of the applicable fees;

111.02(2) Proof of maintenance of certification on a periodic basis, to be determined by the Board, which may consist of attendance at an approved training session, or retesting;

111.02(3) Proof of maintenance of financial responsibility (applies only to applicators); and

111.02(4) Proof of payment of all ad valorem and other taxes which might be

applicable on aircraft and other equipment to be used (applies only to applicators).

Section 112 Processing of Application, Denial of License, Appeal

112.01 Upon receipt of an application for a license, the Board's staff shall review the application for compliance with the act and these regulations, and either approve or disapprove the application. If the Board's staff disapproves the application, the applicant shall be notified in writing of the reasons therefore, and given an opportunity to amend the application. The Board's staff shall be afforded an opportunity and reasonable time to investigate or verify any information or claims made on an application, and may ask the applicant for additional supporting information in order to assure that these regulations and the act are complied with.

112.02 If an application for license is disapproved following the applicant's opportunity to amend the application, and the applicant is denied a license, the applicant shall be notified in writing of such disapproval and denial, and the reasons therefore.

112.03 Any applicant who is denied a license and is so notified in the aforementioned manner may petition the Board for a hearing before the Board by filing a written request for such hearing with the Director of the Board.

Section 113 Records

113.01 Applicators shall keep and maintain records for two years of all applications, including, but not limited to, the following:

113.01(1) The date the application(s) was (were) made;

113.01(2) The pesticide applied and the rate of application (lb / acre; quarts / acre);

113.01(3) The crop/site to which the application(s) was (were) made;

113.01(4) The target pest, if applicable;

113.01(5) Number of acres sprayed;

113.01(6) Location of site and owner;

113.01(7) Wind direction and speed;

113.01(8) Name(s) of pilot(s) and N No.(s) of aircraft;

113.01(9) Any accidents, aborted loads, or unusual circumstances or occurrences during the application;

113.01(10) Other information as may be required by the Board.

113.02 Any applicator who applies glyphosate must maintain a single written statement of the following information stating the conditions under which all glyphosate applications will be made, for purposes of demonstrating compliance with Section 116.01(2) of this Regulation:

113.02(1) specific nozzle type and size, direction of spray as it leaves the nozzle (i.e., straight back = 0°; down-and-back at $45^{\circ} = 45^{\circ}$; straight down = 90°; etc);

113.02(2) boom pressure, (psi);

113.02(3) the name(s) and amount(s) of any additives (amount per 100 gallons of spray) in the spray tank;

113.02(4) aircraft speed (mph) while spraying field(s);

113.02(5) swath width (ft.);

113.02(6) number of nozzles delivering spray, and

113.02(7) VMD and source of VMD information.

Section 114 License and Pesticide Violations

114.01 It shall be unlawful for any person to:

114.01(1) Act, operate, or do business as an applicator or pilot, or to engage in agricultural aircraft operations, without first obtaining an applicator's or pilot's license from the Board;

114.01(2) Act, operate, or do business as an applicator or pilot in violation of any rule or regulation adopted by the Board in accordance with Section 69-21-109, Mississippi Code of 1972 as amended; and

114.01(3) Violate the provisions of Miss. Code Ann. Section 69-21-101 *et seq*. as amended or regulations adopted by the Board.

Section 115 Disciplinary Actions for Violations

115.01 The Board, in exercising its authority to enforce Miss. Code Ann. Section 69-21-101 *et seq*. as amended and its regulations made and adopted in compliance with the act, shall have the power to discipline the holder of a license for violation of any rule, or regulation or written order of the Board or any condition or limitation of a license issued by the Board after a hearing and opportunity to be heard has been given to the holder of the license; pursuant to the authority granted by Miss. Code Ann. Section 69-21-121 and

Section 69-21-129 to wit:

115.01(1) By placing him or her upon probation, the terms of which may be set by the Board;

115.01(2) By suspending his or her right to do business as an applicator or pilot for a time deemed proper by the Board;

115.01(3) By revoking or canceling his or her license and/or;

115.01(4) By levying a penalty pursuant to Miss. Code Ann. Section 69-21-125 and Section 69-21-135 as amended; or

115.01(5) By taking any other action in relation to his or her license as the Board may deem proper under the circumstances.

115.02 The Board shall suspend the license of an applicator or pilot for at least one (1) year if either of the following has occurred:

115.02(1) The Board determines that the licensee has committed one or more violations of this article, any rule, regulation or written order of the Board or any condition or limitation of a license issued by the Board on three (3) separate occasions during any twelve-month period that resulted in the issuance of a penalty of One Thousand Dollars ($1,000.00) or more on each occasion; or

115.02(2) The Board determines that the licensee has committed one or more violations of this article, or any rule, regulation or written order of the Board or any condition or limitation of a license issued by the Board while on probation ordered under Section 115.01(1) of this section.

115.03 Disciplinary action may be made by the Board if it finds that such licensee:

115.03(1) Is guilty of misrepresentation for the purpose of defrauding;

115.03(2) Has made any false statements or representations in his or her application for issuance or renewal of a license;

115.03(3) Has violated any of the provisions of the act or the regulations promulgated by the Board;

115.03(4) Has made any application in a careless or negligent manner;

115.03(5) Has used or applied any pesticide in a manner which is determined to be inconsistent with its labeling;

115.03(6) Has neglected or refused to keep and maintain records required by these regulations, or refused or neglected to make reports when required;

115.03(7) Has made false or fraudulent records, invoices, or reports;

115.03(8) Has aided or abetted any person in evading the provisions of this act and regulations adopted by the Board, or allowed his or her license to be used by an unlicensed person;

115.03(9) Has violated the Federal Insecticide, Fungicide and Rodenticide Act;

115.03(10) Has been found liable for using any pesticide in a manner which is determined to be inconsistent with its labeling;

115.03(11) Has performed work in a category for which he or she is not licensed;

115.03(12) Has been convicted in any of the courts of this state for a violation of the act or these regulations;

115.03(13) Has refused to yield a pesticide sample to the Board or its inspectors; or

115.03(14) Has failed to renew the bond or insurance required in these regulations to maintain financial responsibility, such failure means automatic cancellation of his or her license.

115.04 Prior to any disciplinary action being taken by the Board against a pilot or applicator regarding an alleged violation of these regulations or Mississippi law, except any disciplinary action to which the pilot or applicator voluntarily agrees by signing an agreed administrative order also signed by the Board chairperson, the Board shall give the alleged violator at least thirty (30) days written notice that an evidentiary hearing will be held to adjudicate the alleged violation and stating therein the time, date, and place of the hearing. The hearing shall be conducted in accordance with these regulations.

Section 116 Application Techniques and Spray Equipment

116.01 Spray Equipment

116.01(1) In order to minimize spray drift via the wingtip/rotortip vortex, the distance between the outermost nozzles shall not exceed seventy (70) percent (%) of the wingspan/rotorspan, except for aircraft equipped for standard mosquito control applications and helicopters equipped with nozzles delivering sprays with a 750 micron or larger volume median diameter according to the USDA ARS College Station, TX models, or data from nozzle manufacturers.

116.01(2) Only equipment, operating conditions, and tank mixes that will produce a volume median diameter droplet size of 300 microns (μm) or larger as determined by use of the appropriate USDA ARS (College Station, TX) atomization model (http://apmru.usda.gov/downloads/downloads.htm), or data from nozzle manufacturers, without consideration of any tank mix adjuvants, will be allowed

for applications of glyphosate. Does not apply to standard mosquito control applications.

116.02 Application of Herbicides, Desiccants, and Defoliants

116.02(1) Unless otherwise restricted by regulation or labeling, the application of herbicides is prohibited when the wind speed is over ten (10) miles per hour.

116.02(2) Any pilot who applies glyphosate products with a fixed wing aircraft must have at least 500 hours of commercial agricultural aerial application flying time.

Section 117 Pesticides and Labeling Violations

117.01 The application or use of any pesticide in a manner inconsistent with its labeling by an applicator or pilot is hereby determined by the Board to constitute a violation of the act and these regulations, and is hereby prohibited. A violation of this section of these regulations by a licensed applicator or pilot is reason for a review by the Board to determine if the licensee should be disciplined as provided for by these regulations.

117.02 The term "to use any pesticide in a manner inconsistent with its labeling" means to use any pesticide in a manner not permitted by the labeling except the term shall not include:

117.02(1) The use of a pesticide at any dosage, concentration, or frequency less than that specified on the labeling unless any deviation is prohibited by the labeling;

117.02(2) Use of a pesticide against any target pest not specified on the labeling if the use is on a crop or site specified on the labeling, unless prohibited by the labeling, EPA or the Board;

117.02(3) Tank mixing pesticides and/or fertilizer when such mixing is not prohibited by the labeling, EPA or the Board;

117.02(4) Employing any method of application not prohibited by the labeling, EPA or the Board.

Section 118. Request for a Hearing

118.01 Any interested person has the right to request the Board to call a hearing for the purpose of taking action in respect to any matter within the jurisdiction of the Board by making a request therefore in writing.

118.02 Upon receipt of any such request, the Board shall conduct such investigations as it deems necessary.

118.03 On the basis of its investigations, the Board shall schedule the matter for hearing or shall determine in writing that no hearing is warranted.

Section 119 Enforcement

119.01 Whenever the Board, an employee of the Board or the Mississippi Department of Agriculture, Bureau of Plant Industry or a designated contractor of the Board has reason to believe that a violation of applicable state law, the regulations adopted by the Board, a condition included in a license issued by the Board, or an order issued by the Board has occurred, the Board may cause a written notice of violation to be served upon the alleged violator or violators.

119.01(1) The notice of violation shall specify the statute, regulation, license or order alleged to be violated and the facts alleged to constitute a violation thereof and shall require that the alleged violator appear before the Board at a time and place specified in the notice and answer the charges complained of.

119.01(2) The time of appearance before the Board shall not be less than fifteen (15) days from the date of the receipt by the alleged violator of the notice of violation, as proven by testimony, affidavit of the person delivering the notice of violation to the alleged violator, entry into evidence of a United States Postal Service return receipt or similar evidence of receipt.

119.02 The Board shall afford an opportunity for a hearing to the alleged violator at the time and place specified in the notice of violation. A certified court reporter shall be present at the hearing who shall make a transcription of the proceedings. At the hearing, both the alleged violator and the staff, or their legal representatives, shall be allowed to present legal arguments, factual evidence and witnesses relevant to the allegations and shall be allowed to cross-examine witnesses for the opposing party.

119.03 Board hearings may be conducted by the Board itself, or the Board may appoint a hearing officer who shall be authorized to conduct the hearing and to have the record of the hearing prepared and delivered to the Board along with that hearing officer's recommended findings of fact and conclusions of law. On the basis of the evidence produced at the hearing, the Board shall make findings of fact and conclusions of law and enter an order that in its opinion will best further the purposes of this article. The Board's order may include an assessment of penalties, the imposition of injunctive relief, or both. If the Board has utilized a hearing officer in the matter, the Board may, upon review of the hearing record, issue an order accepting the hearing officer's recommended findings of fact and conclusions of law or may include in its order the Board's own findings of fact and conclusions of law. The Board shall give written notice of the order to the alleged violator and to other persons who make written request for notice of the order, and the Board may assess such penalties as provided in this article.

119.04 The Board or its hearing officer may require the attendance of witnesses, administer oaths and hear testimony, either oral or documentary, for and against the accused. The Board

may issue subpoenas to compel the attendance of witnesses and the production of books, papers, records or other documentary evidence at a hearing. Subpoenas may be served by any method allowed by the Mississippi Rules of Civil Procedure or may be served by certified mail, return receipt requested.

119.05 The Board may settle an enforcement matter before a hearing. The settlement of any enforcement matter shall be memorialized in an order approved by the Board and subject to review under Section 69-21-133.

Section 120 Powers

120.01 The Board or designated hearing officer shall have the power to:

120.01(1) Rule upon motions and requests;

120.01(2) Set the time and place of the hearing or conference, adjourn the hearing from time to time, and change the time and place of the hearing;

120.01(3) Administer oaths and affirmations;

120.01(4) Examine witnesses;

120.01(5) Rule upon admissibility of evidence;

120.01(6) Hear oral argument of facts and law; and

120.01(7) Do all acts and take all measures necessary for the maintenance of order at the hearing and for the efficient, fair and impartial conduct of the proceeding.