SUBPART 3-BUREAU OF PLANT INDUSTRY
CHAPTER 11-Regulation of Professional Services
SUBCHAPTER 03-Regulations Governing Commercial Weed Control Work

Definitions

300 For the purpose of these regulations, the following words, names and terms shall be construed within the meaning and purpose of Sections 69-19-1 through 69-19-11 and Sections 69-23-101 through 69-23-133, Mississippi Code 1972.

1. "Act" shall mean Sections 69-19-1 through 69-19-11 and Sections 69-23-101 through 69-23-133, Mississippi Code 1972.
2. "Bonafide Employee" shall be a person who receives all or part of his salary, pay or commission from a license holder and whose salary, pay or commission is regularly reported under Federal Social Security and/or income tax laws. A bonafide employee must be under the direct supervision of a license or a permit holder.
3. "Branch Office" shall mean any establishment or place of business other than the place of business managed by the operator that has at least one employee capable of answering questions, scheduling normal inspections or work, or performing work covered by these regulations. A telephone answering service is not a "Branch Office".
4. "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 in the category or categories listed on said certificate.
5. "Certified Applicator" shall mean a licensee or his employee who has met the requirements for certification.
6. "Commissioner" shall mean the commissioner of the Mississippi Department of Agriculture and Commerce.
7. "Competent" shall mean a person who is capable of performing the various functions associated with pesticide application and weed control; the degree of capability required being directly related to the nature of the activity and the associated responsibility.
8. "Bureau" shall mean the Bureau of Plant Industry of the Mississippi Department of Agriculture and Commerce created under the provisions of Section 69-25-3, Mississippi Code 1972.
9. "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 Section 69-25-5, Mississippi Code 1972.
10. "License" shall mean a document issued by the Bureau which indicates that a person has met the requirements set forth in the Act and these rules and regulations to receive fees for services in the categories indicated on said document.
11. "Permit" shall mean a document issued by the Bureau indicating that a person has thorough understanding of the weed or weeds that a licensee is licensed to control and is competent to use or supervise the use of a restricted use

pesticide under the categories listed on said document at any branch office. A permit is not a license.

12. "Permit Holder" shall mean a bonafide employee of a license holder who has passed a permit examination for each category in which work is performed and is responsible for supervising the activities indicated on said permit at a branch office.
13. "Person" shall mean any individual, partnership, corporation, association, company or organized group of persons whether incorporated or not.
14. "Professional Services" shall mean any of the professional services performed as designated by the various categories listed under subsection 305.04 of this chapter.
15. "Restricted Use Pesticides" shall mean a pesticide that is classified for restricted use by the Environmental Protection Agency or the Bureau.
16. "Under the Direct Supervision" 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 license or permit holder who is responsible for the actions of that person and who is available if and when needed, even though such license or permit holder is not physically present at the time and place the pesticide is applied.
17. "Weed" shall mean any plant which grows where it is not wanted.
18. "Weed Control Work" shall mean receiving fees for the actual spraying or other pesticide application methods used for the control or eradication of any weed.

Persons Required To Secure A License

301 Persons performing weed control work must secure a license from the Bureau of Plant Industry, Mississippi Department of Agriculture and Commerce in accordance with Section 69-19-9, Mississippi Code 1972. No person shall advertise in any manner to render professional services or solicit business within the meaning of the Act without first obtaining a license.

Persons Required To Secure A Permit

302 Each branch office shall have at least one permit holder for each category for which the licensee is soliciting and/or performing work. Any bonafide employee may hold a permit in one or all of the categories for which the business is licensed.

License Application; Qualifications

303 Application for a license shall be submitted on a regular form furnished by the Bureau, in time to be approved ten (10) days prior to regular scheduled examinations. The applicant shall furnish names of several references as to his character and a satisfactory credit report. No application for a license shall be

accepted unless the applicant shall furnish written proof that he meets one of the following requirements:

1. Must be graduated from a recognized college or university with at least 15 semester hours or the equivalent in areas related to weed
2. Must have not less than two years college or university training with special training in the field of weed control
3. Must be at least a high school graduate, and having had in addition, at least one year's experience with a licensed operator within the last two years
4. If the applicant does not have a high school degree or its equivalency, he must be able to furnish proof that he has had at least two years experience with a licensed operator within the past three years.

Permit; Application; Qualifications

304 Application for a permit shall be submitted on a regular form furnished by the Bureau in time to be approved ten (10) days prior to regular scheduled examinations. No permit application shall be accepted unless the applicant furnishes written proof that he is a bona fide employee of a person holding a license in one or more of the categories listed under subsection 305.04 of this chapter.

License; Examination; Categories

305.01 Each person required to secure a license in accordance with the Act shall be examined as follows: When the firm operates under the control of one person who is solely responsible for the work, this person alone shall be required to pass the examination. When more than one person is responsible, each shall be required to pass the examination. A person may designate an employee who regularly and actively in charge to take the examination and a license will be issued naming the employee as supervisor. Both the employee and the person to whom the license is issued will be held responsible for the professional services rendered.

305.02 The license applicant shall take and pass a written examination. This examination will cover the professional services designated in the application and include the standards for certification of applicators set forth in the Environmental Protection Agency Code of Federal Regulations, Title 40, S 171.4.

305.03 Examination dates: Examinations shall be given at least once each quarter at Mississippi State, Mississippi. The date for the written examination shall be the second Tuesday in each quarter of the calendar year. If the applicant fails the examination twice in consecutive attempts, the applicant shall wait a full year before taking the examination again. Applicants who have any licensing exam twice in consecutive attempts must file a new application and meet the requirements of subsection 303 of this chapter.

305.04 Categories in which examinations are to be given and for which licenses or permits will be issued:

1. Agricultural Weed Control-Control of weeds in field crops, vegetable crops, pastures and rangeland.
2. Aquatic Weed Control-Control of weeds in and around edges of lakes, ponds and streams.
3. Forest and Right-Of-Way Weed Control-Contort of weeds of rights-of-way, forest lands and drainage ditches.
4. Ornamental and Turf Weed Control-Control of weeds in ornamental plants, lawns, golf courses, cemeteries and similar areas.
5. Industrial Weed Control-Control of weeds on or around industrial areas, such as lumber yards; areas around manufacturing plants, stores, warehouses, storage or holding yards, fences, etc.

Permit Examination; Categories

306.01 The permit applicant shall take a written examination. This examination will cover the professional services designated in the application and include the standards for certification of applicators as set forth in the Environmental Protection Agency Code of Federal Regulations, Title 40, Section 171.4.

306.02 Examination dates: Examinations shall be given at least once each quarter at Mississippi State, Mississippi. The dates for written examinations shall be the second Tuesday in each quarter of the calendar year.

306.03 Categories in which examinations are to be given and for which permits will be issued are the same as the license categories set forth in subsection 305.04 of this chapter.

Issuance Of A License

307.01 If the qualifications and other requirements of the license applicant are satisfactory, the Bureau shall then require that said applicant submit a detailed statement of the methods he will employ. Applicant must submit in writing the proposed company name for approval. No license shall be issued for two companies with the same or similar names. If these are approved, said applicant shall then furnish a bond in the proper amount as set forth in Section 311 of this chapter in conformity to Section 69-19-9, Mississippi Code 1972. After all requirements have been met by the applicant for licensing, the Bureau shall then issue said applicant a license, PROVIDED, that no license shall be issued any person who fails to disclose to the Bureau the ingredients used in his practice, or who uses any material or method which has not been approved the Bureau. A license is not transferable. When there is a change in the status of a license holder

due to uncontrollable circumstances, ninety (90) days will be allowed for a qualified person to meet the requirements of Section 301 of this chapter.

307.02 Persons requesting a license must have passed the required examination within the past year or have been actively engaged in the work since passing the examination or be reexamined before his license can be issued.

307.03 When a license holder changes a mailing address or physical location, the Bureau must be notified in writing within ten (10) working days and required documents for reissuance of license must be submitted.

Issuance Of Permit

308.01 After all requirements have been met by the applicant for a permit the Bureau shall then issue said applicant a permit. A permit is not transferable. When there is a change of the status of the person holding a permit who is supervising a business location, the license holder shall be allowed ninety (90) days in order to have another bonafide employee meet the requirements of Section 302 of this chapter.

308.02 Persons requesting a permit must have passed the required examination within the past year or have been actively engaged in the work since passing the examination or reexamined before his license can be issued.

308.03 When a permit holder changes a mailing address or physical location, the Bureau must be notified in writing within ten (10) working days and required documents for reissuance of license must be submitted.

Expiration Of A License Or A Permit And Conditions For Renewal

309 All licenses and permits shall expire thirty-six months from the date of issuance. To renew said license or permit, the holder of same shall submit a request for renewal on a form prescribed by the Bureau and show that he is knowledgeable of current control recommendations, techniques and abreast of changing technology and pesticide usage. To meet these requirements, the licensee or permit holder shall have attended a training course approved by the Bureau within the past twelve (12) months or successfully completed an examination administered by the Bureau.

Denial, Suspension Or Cancellation Of A License Or A Permit; Refusal To Issue Or Renew Same

310.01 The commissioner with the approval of the advisory board may suspend for not more than thirty days and then after opportunity for a hearing may deny, suspend, cancel or modify the provisions of a license or a permit if he finds that a person

holding a license or a permit has committed any of the following applicable to him each of which is declared to be a violation of the Act and these regulations:

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, the regulations adopted hereunder, or any lawful order of the commissioner;
4. Refused, or neglected to keep and maintain records required by the 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 a license or permit;
7. Aided or abetted any person in evading the provisions of the Act, allowed one's license to be used by an unlicensed person;
8. Impersonated any state or federal official;
9. Convicted in a court of law of a violation under the Federal Insecticide, Fungicide and Rodenticide Act;
10. Convicted in a court of law for using any pesticide in a manner which is determined to be inconsistent with its labeling;
11. Misrepresented for the purpose of deceiving or defrauding;
12. Made a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their detriment;
13. Performed work in a category for which the licensee does not hold a license;
14. If repeated inspections by inspectors of the Bureau reveal that the licensee is not performing services in a manner consistent with the Act and these regulations;
15. Failed to register agents or solicitors or failure to make reports within the time specified in these regulations;
16. Convicted in any of the courts of this state of a violation of the Act or these rules and regulations;
17. Refused to yield a pesticide sample to an employee of the Bureau;
18. Failed to correct work not performed in accordance with the Act and these rules and regulations after sufficient notice;
19. Failure to renew the bond required in Section 311 of this chapter means automatic cancellation.
20. Failure to renew a license or permit prior to the expiration date.

310.02 Any person who is denied a license or a permit or whose license or permit is suspended, canceled 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 days after receipt of notice from the commissioner of such denial, suspension, cancellation or modification. The commissioner shall set a time and place for such hearing and shall convene the board within ten 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 days.

310.03 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 review with supersedeas. The chancellor shall grant a hearing on said petition and may grant such review with supersedeas; 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.

310.04 Any person who is refused a license or a permit or whose license or permit is not renewed, or when the Bureau contemplates invalidation of said license or permit, shall have the right of a hearing by filing a written request for a hearing with the Bureau by registered or certified mail. The person requesting the hearing may appear in person or be represented by an attorney on the date and at the place set by the Bureau.

310.05 When a license has been canceled, the licensee shall be notified in writing. The bonding company shall be notified of the action taken, but revoking a license shall in no way invalidate the bond for the duration of the contract entered into by the licensee. When a permit has been canceled, the person holding said permit shall be notified in writing.

310.06 A license shall automatically become invalid when the person whose name appears on the license ceases to personally supervise and be in direct charge of operations and shall remain invalid until some other person, having met the requirements and been examined in accordance with these rules and regulations becomes licensed in his stead; except as provided for in Section 307 of this chapter.

Bond

311.01 The bond furnished the Bureau by and licensee, as provided in Section 69-19-9, Mississippi Code 1972, shall be conditioned so as to insure to the purchaser of services from said licensee the fulfillment of any contract or guarantee made by the licensee. No surety bond shall be accepted except form companies approved by the Insurance Department of Mississippi.

311.02 (b) All persons holding licensed to engage in the control of any kind of weeds shall be required to file with the Bureau a bond of not less than $2,500 to insure the faithful performance of contracts. Said bond shall be so conditioned as to be

valid and effective for the minimum time for which the licensee shall issue guarantees or contracts to render future service.

Inspections; Records; Reporting; Contracts

312.01 Licensed operators shall keep complete and accurate records of all work performed including copies of contracts issued for as long as they are current and for two (2) years after their expiration. Such records shall be available for examination by employees of the Bureau during reasonable business hours. Such records shall include location, kind of services performed, date performed, the pest controlled, brand name and EPA registration number of pesticide used, total amount of product used, the pesticide dilution rate, the total volume of diluted pesticide applied and such other information as may be necessary for a complete record. Records, providing proof of purchase of EPA registered products, must be maintained for two (2) years after purchase date on invoices.

312.02 The commissioner or his representative may enter upon public or private premises at reasonable times for the purpose of enforcing the Act and these regulations and may investigate complaints of injury or accidents resulting from use of pesticides.

Identification; Operators; Employees; Equipment

313.01 Operators-All operators or owners of a weed control business soliciting work or dealing with the public must be provided with an identification card to be obtained from the Bureau.

313.02 Employees-

1. All employees of licensed operators who solicit business or otherwise represent the operator in dealing with the public, must be provided with an identification card, to be obtained from the Bureau. An employee of any operator considered as a laborer shall have an identification card or be accompanied by an employee who holds a valid identification card. A recent picture of the employee shall be permanently attached to the identification card.
2. The operator shall request in writing identification cards for his employees and himself by providing a picture of each person. When an operator or employee resigns or is discharged, his identification card shall be returned to the Bureau for cancellation.
3. The identification card shall be in the possession of the operator or owner, or his employee at all times, when performing work, or soliciting business and will be presented on request to the person or persons for whom business is performed or solicited.
4. An identification card will not be issued to any person who has been employed by another operator until his previous card has been returned to the Bureau for cancellation, or the Bureau has been notified in writing by the former

employer that the person is no longer employed and that the card was not retrieved from the former employee. Notification to the Bureau must be made within ten (10) working days of person's final date of employment.

313.03 Equipment-All vehicles and mobile equipment used by persons while engaged in professional services covered by the Act and these regulations shall be marked for easy identification. This marking shall contain the company name.

Approved Pesticides

314 Persons licensed in accordance with these regulations shall use all pesticides in a manner consistent with the label.

Inspection By The Bureau

315 At such times as it may deem desirable the Bureau shall examine properties treated for weed control for the purpose of determining the efficiency of the treatment given.

Bonafide Employee

316 Services or work performed under any section of these regulations must be performed only by the licensee or his bonafide employee.

Examination Requirements For General Standards

317 Persons licensed before July 13, 1976, shall successfully complete an examination covering general standards for certified commercial applicators as set forth in Environmental Protection Agency Code of Federal Regulations, Section 171.4 (b).

(Adopted March 29, 1977. Amended September 18, 1979, and May 12, 1995, June 5, 1998.)

Authority: Miss. Code Ann. §§69-19-1 and 69-23-109.