

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

May 10, 2019

Andy Gipson, Commissioner
Mississippi Dept. of Agriculture & Commerce
Post Office Box 1609
Jackson, Mississippi 39215-1609

Re: Authority to oversee the State's pesticide certification program

Dear Commissioner Gipson:

Attorney General Jim Hood is in receipt of your request for an official opinion on behalf of the Mississippi Department of Agriculture and Commerce, and it has been assigned to me for research and reply.

Background

Your request states, in part:

The Department seeks to update its authority to oversee the state's pesticide certification program as required by the United States Environmental Protection Agency ("EPA"). . . 40 C.F.R. Section 171.303 sets forth certain requirements for each state's certification plan, including a written opinion from the state attorney general indicating the lead agency's legal authority to carry out the state certification plan. In 2017, the EPA issued an updated rule on the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") pertaining to the certification of individuals to use "restricted use" pesticides. Under this law, individuals must demonstrate a certain degree of competency prior to their being able to use these particular products. Additionally, individual states are allowed to develop, implement, and maintain certification plans to achieve compliance with the federal standards. In the State of Mississippi, the Department's Bureau of Plant Industry is designated as the lead agency with the responsibility of overseeing and enforcing pesticide-related statutes. The Department and the Bureau of Plant Industry request that you review the applicable Mississippi statutes to determine if the Department has legal authority to fully enforce all of the provisions required for our state's pesticide applicator certification plan under FIFRA.

Applicable Law and Analysis

Applicable state laws, rules and regulations are as follows:

- (1) Mississippi Pesticide Law of 1975, *Miss. Code Ann.* Sections 69-23-1 through 69-23-29;
- (2) Mississippi Pesticide Application Law of 1975, *Miss. Code Ann.* Sections 69-23-101 through 69-23-135;
- (3) Regulation of Professional Services, *Miss. Code Ann.* Sections 69-19-1 through 69-19-15;
- (4) Agriculture Aviation Licensing Law, *Miss. Code Ann.* Sections 69-21-101 through 69-21-126;
- (5) Regulations Governing Registration of Pesticides and Pesticide Products, Subpart 3, Chapter 08, Subchapter 01, Sections 100-113;
- (6) Regulations Governing Persons Distributing or Offering for Sale Restricted Use Pesticides, Subpart 3, Chapter 08, Subchapter 02, Sections 200-211;
- (7) Regulations Governing the Certification of Private Applicators to Use "Restricted Use" Pesticides, Subpart 3, Chapter 09, Subchapter 01, Sections 100-112;
- (8) Regulations Governing Certified Applicators Who Are Not Required by Other Mississippi Laws and Regulations to be Licensed or Certified, Subpart 3, Chapter 09, Subchapter 02, Sections 200-211;
- (9) Regulations Governing Commercial Insect, Rodent, Plant Disease, and Weed Control Work, Subpart 3, Chapter 11, Subchapter 01, Sections 100-120;
- (10) Regulations Governing Entomological, Plant Pathological, and Weed Control Consultants, Subpart 3, Chapter 11, Subchapter 02, Sections 200-208; and
- (11) Regulation of Application by Aircraft of Agricultural Substances, Subpart 3, Chapter 10, Subchapter 01, Sections 100-121.

Pursuant to the *Mississippi Pesticide Law of 1975, Miss. Code Ann. Sections 69-23-1 et seq.*, the Commissioner of Agriculture and Commerce has exclusive jurisdiction in all matters pertaining to the distribution, sale and transportation of pesticides. Likewise, the *Mississippi Pesticide Application Law of 1975, Miss. Code Ann. Sections 69-23-101 et seq.*, gives the Commissioner of Agriculture and Commerce sole authority to regulate any matter related to the sale, handling, registration, distribution, notification of use, application and use of pesticides. Additionally, state law gives the Department authority to adopt regulations to enforce both the *Mississippi Pesticide Law* and the *Mississippi Pesticide Application Law*. The Department's Bureau of Plant Industry carries out various activities to certify commercial and private applicators of pesticides, cooperates with the EPA on enforcement of federal pesticide laws, inspects records of applications of restricted-use pesticides and investigates pesticide misuse complaints.

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Based on the aforementioned statutory and regulatory authority, it is our opinion that the Department has the legal authority necessary to carry out the state certification plan.

Please let us know if this office can be of further assistance.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By: 

Rebecca T. Wilson *by: [initials]*
Special Assistant Attorney General

OFFICIAL OPINION