

Queensland



Subordinate Legislation 1998 No. 135

Agricultural Chemicals Distribution Control Act 1966

**AGRICULTURAL CHEMICALS
DISTRIBUTION CONTROL REGULATION
1998**

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PART 1—PRELIMINARY

Short title

1. This regulation may be cited as the *Agricultural Chemicals Distribution Control Regulation 1998*.

Definitions

2. In this regulation—

“**apply**”, for a licence, includes an application to renew the licence by a person who holds the licence.

“**approved accreditation**” means an accreditation the holding of which is approved under section 13.

“**authorised technique**”, for part 3, division 2, see section 32.

“**distribution permit**”, for part 3, division 2, see section 32.

“**examination**”, for a licence, means an examination for the licence conducted under part 2, division 3, subdivision 1.

“**hazardous area No. 1**”, for part 3, division 2, see section 33.

“**hazardous area No. 2**”, for part 3, division 2, see section 33

“**permit condition**”, for part 3, division 2, see section 32.

Parts of State excluded—Act, s 3

3. For section 3¹ of the Act, the parts of the State to which the Act does not apply are the parts described in schedule 1.

Exclusion from definition “ground equipment”

4.(1) For the definition “ground equipment” in section 6(1)² of the Act, the equipment described in subsection (2) is, other than in a hazardous area,

1 The Act, section 3 (Application of Act)

2 The Act, section 6 (Definitions)

prescribed not to be ground equipment for the Act.

(2) Subsection (1) applies to equipment used to distribute an agricultural chemical that is—

- (a) powered by hand or by compressed air or gas applied directly to the spray liquid for distribution without the use of air blast techniques; or
- (b) a hose proportioning device.

PART 2—LICENCES

Division 1—General

Form of licence

5.(1) A licence or a renewal of a licence must be in the approved form.

(2) An aerial distribution contractor licence or a renewal of the licence must state—

- (a) each pilot in command the licensee has authorised to carry out aerial distribution; and
- (b) each aircraft from which aerial distribution is authorised to be carried out under the licence.

Classes of commercial operator's licence—Act, s 16(1)

6. For section 16(1) of the Act, the prescribed classes of commercial operator's licences are—

- (a) an unrestricted commercial operator's licence; and
- (b) a commercial operator's licence, restricted to herbicides or equipment stated in the licence.

Division 2—Licence qualifications**Pilot chemical rating licence—Act, s 12(2)(b)**

7. For section 12(2)(b)³ of the Act, the prescribed qualification for a person to apply for or hold a pilot chemical rating licence is that the person must—

- (a) have passed the examination for the licence; or
- (b) hold an approved accreditation for the licence.

Commercial operator's licence—Act, s 16(2)

8. For section 16(2)⁴ of the Act, the prescribed qualification for a person to apply for or hold a commercial operator's licence is that the person must—

- (a) have passed the examination for the licence; or
- (b) hold an approved accreditation for the licence.

Division 3—Examinations and approved accreditations***Subdivision 1—Examinations*****Who may sit for examination**

9. A person may sit for an examination for a pilot chemical rating licence or a commercial operator's licence if—

- (a) the person has not failed—
 - (i) an examination for the licence within 7 days; or
 - (ii) 3 consecutive examinations for the licence and the last failure was within 3 months; and

³ The Act, section 12 (Pilot chemical rating licence)

⁴ The Act, section 16 (Commercial operators' licence)

- (b) the person gives written notice to the standards officer that the person wishes to sit for an examination for the licence.

Conduct of examination

10.(1) This section applies if a person mentioned in section 9 has given notice to the standards officer under section 9(b).

(2) The standards officer must conduct the examination as soon as practicable.

(3) The standards officer may—

- (a) appoint another person who has appropriate qualifications, experience or standing to help the officer conduct the examination; or
- (b) fix conditions for the conduct of the examination; or
- (c) fix the standard to pass the examination.

(4) An appointment must be by signed writing.

Notice of examination

11.(1) The standards officer must give each applicant to sit for an examination notice of its time and place as soon as practicable after the officer receives the application.

(2) Notice under subsection (1) may be given orally.

(3) The officer must also give each applicant written notice of the following before the examination starts—

- (a) any conditions fixed for the conduct of the examination;
- (c) the standard for a pass.

Cancellation of result and re-examination

12.(1) This section applies if the Board considers that—

- (a) cheating or an irregularity happened in the conduct of an examination; and

- (b) the examination result for a person who sat for the examination (the “**candidate**”) would not have been the same if the cheating or irregularity had not happened.
- (2) The Board may cancel the candidate’s result.
- (3) If the result is cancelled, the candidate—
- (a) is taken not to have sat for the examination; and
 - (b) subject to section 9(a),⁵ may apply to sit for the examination again.
- (4) The Board must give written notice of the cancellation as soon as practicable after making the cancellation.
- (5) The notice must state the following—
- (a) the result cancelled;
 - (b) the reasons for the cancellation;
 - (c) that the candidate may appeal against the cancellation to a Magistrates Court within 28 days after the candidate receives the notice;
 - (d) how to start an appeal.⁶
- (6) The candidate may appeal against the cancellation to a Magistrates Court within 28 days after the candidate receives the notice.
- (7) Sections 22A to 22E of the Act apply to the appeal as if the cancellation were a decision of the Board to refuse an application for a licence.
- (8) This section does not apply to a decision that the court substitutes for the cancellation.

⁵ Section 9 (Who may sit for examination)

⁶ For how to start an appeal, see subsection (7) and the Act, section 22A (How to start an appeal).

Subdivision 2—Approved accreditations

Board may approve

13.(1) The Board may, by gazette notice, approve the holding of an accreditation as an alternative qualification to the passing of the examination for a pilot chemical rating or commercial operator's licence.

(2) The Board may approve an accreditation only if satisfied the holding of the accreditation is an appropriate qualification for the licence.

Division 4—Refusal of licences

When Board may refuse

14.(1) The Board may refuse an application for a licence if the applicant has committed an offence against the Act or the *Health (Drugs and Poisons) Regulation 1996*, section 290.⁷

(2) The Board may also refuse an application for an aerial distribution contractor licence if the applicant has contravened a request by the standards officer under section 26(2)⁸ of the Act.

Notice of refusal

15.(1) If the Board decides to refuse an application for a licence, the standards officer must give the applicant notice of the decision as soon as practicable after the making of the decision.

(2) The notice must state the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the applicant may appeal against the decision to a Magistrates

⁷ The *Health (Drugs and Poisons) Regulation 1996*, section 290 (Unsafe disposal of poisons)

⁸ The Act, section 26 (Records to be kept)

Court within 28 days after the applicant receives the notice;

- (d) how to start an appeal.⁹

Division 5—Suspension and cancellation

Notice of suspension by standards officer

16.(1) If the standards officer decides to suspend a licence under section 20¹⁰ of the Act, the standards officer must give the holder of the licence notice as soon as practicable after the making of the decision.

(2) The notice must state the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the applicant may appeal against the decision to a Magistrates Court within 28 days after the applicant receives the notice;
- (d) how to start an appeal.¹¹

Right of appeal

17.(1) This section applies if the standards officer gives the holder of a suspended licence notice of the officer's decision to suspend the licence.

(2) The holder may appeal against the suspension to a Magistrates Court within 28 days after the applicant receives notice of the suspension.

(3) Subject to section 18, sections 22A to 22E of the Act apply to the appeal as if the decision were a decision of the chief executive to suspend the licence.

⁹ For how to start an appeal, see the Act, section 22A (How to start an appeal).

¹⁰ The Act, section 20 (Suspension of licence by standards officer)

¹¹ For how to start an appeal, see the Act, section 22A (How to start an appeal).

Substituted decision on appeal

18. Sections 16 and 17 do not apply to a decision that a Magistrates Court substitutes for the decision that was appealed from.¹²

Surrender of suspended or cancelled licence

19.(1) This section applies to a notice to a holder of a licence from the standards officer under section 21(5)¹³ of the Act or under section 16(1) of this regulation.

(2) The notice may state a day by which the holder must surrender the licence to the standards officer.

(3) The holder must comply with the notice unless the holder has a reasonable excuse for not complying with it.

Maximum penalty—20 penalty units.

(4) The standards officer must return the licence to the holder as soon as practicable if, because of an appeal, the cancellation or suspension mentioned in the notice ends.

Division 6—Amendment of aerial distribution contractor licences**Application to amend**

20.(1) An aerial distribution contractor may apply to the Board to amend the following particulars in the contractor's aerial distribution contractor licence—

- (a) the pilots in command the licensee has authorised to carry out aerial distribution;
- (b) the aircraft from which aerial distribution is authorised to be carried out under the licence.

(2) The application must be made in the approved form.

¹² See also section 17(3) and the Act, section 22D(2) (Powers of court on appeal).

¹³ Section 16 (Notice of suspension by standards officer)
Section 21 of the Act (Cancellation or suspension of licence)

Amendment

21.(1) If the application is granted, the standards officer may amend the licence to give effect to the application.

(2) Also, the standards officer may at any time amend the licence to correct a minor or clerical error.

Notice of refusal

22.(1) If the Board decides to refuse the application, the standards officer must give the applicant notice of the decision as soon as practicable after the making of the decision.

(2) The notice must state the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the applicant may appeal against the decision to a Magistrates Court within 28 days after the applicant receives the notice;
- (d) how to start an appeal.¹⁴

Right of appeal

23.(1) This section applies if the standards officer gives an applicant notice of the Board's decision to refuse an application to amend an aerial distribution contractor licence.

(2) The applicant may appeal against the decision to a Magistrates Court within 28 days after the applicant receives notice of the decision.

(3) Sections 22A to 22E of the Act apply to the appeal as if the decision were a decision of the Board to refuse an application for a licence.

(4) This section does not apply to a decision that the court substitutes for the decision.

¹⁴ For how to start an appeal, see section 23(3) and the Act, section 22A (How to start an appeal).

Division 7—Miscellaneous**Production of licences**

24.(1) This section applies if the standards officer or an inspector—

- (a) finds a licensee committing, or reasonably suspects a licensee has committed, an offence against the Act; or
- (b) is exercising a power under section 32 or 34 of the Act and the exercise of the power relates to a licensee.¹⁵

(2) The officer may require the licensee to produce to the officer at a stated reasonable time and place any licence held by the person that relates to the offence or the exercise of the power.

(3) The person must comply with the requirement unless the person has a reasonable excuse for not complying with it.

Maximum penalty—20 penalty units.

(4) If the person is required to produce a commercial operator's licence, the requirement may also be complied with by the production of the licence within 2 days to—

- (a) the person in charge of any police station nominated by the officer; or
- (b) a public service employee employed by the department who is nominated by the officer.

¹⁵ The Act, section 32 (Powers of inspection in case of damage to crops etc.)
The Act, section 34 (Powers of inspectors)

PART 3—AERIAL AND GROUND DISTRIBUTION

Division 1—General

Prescribed security for ground distribution—Act, s 25(3)(b)

25. For section 25(3)(b)¹⁶ of the Act, the prescribed amount for security by way of a contract of insurance is any amount not less than \$20 000.

Aerial and ground equipment that may be used

26. The Board may, by gazette notice, approve the use of the types of aerial and ground equipment for the purpose of aerial or ground distribution.¹⁷

Notice of damage by agricultural chemicals—Act, s 30(1)

27. For section 30(1)¹⁸ of the Act, the prescribed particulars and information for a notice to the standards officer are the particulars and information required to be given in the approved form.

Regulation of distribution if damage or injury to crop or stock

28.(1) This section applies to—

- (a) the pilot in command in charge of aerial distribution; or
- (b) a licensed commercial operator in charge of ground distribution.

(2) The pilot or operator must not carry out the distribution with equipment or under meteorological conditions that might reasonably be expected to cause damage or injury to—

¹⁶ The Act, section 25 (Security against loss occasioned by aerial distribution and certain ground distribution)

¹⁷ Under section 38 of the Act (Aerial and ground distribution with approved equipment only and in compliance with s 25), equipment for the purpose of aerial or ground distribution must be of an approved type or kind.

¹⁸ The Act, section 30 (Notice of damage by agricultural chemicals)

- (a) a crop that the pilot or operator did not intend to treat by the distribution; or
- (b) stock.

Maximum penalty—20 penalty units.

Regulation of aerial distribution

29. A pilot in command must not carry out aerial distribution unless each spray nozzle used to carry out the distribution is fitted with a positive and effective leak-proof cut-off system.

Maximum penalty—20 penalty units.

Restriction on opening containers of volatile chemicals

30.(1) This section applies if a container holds a volatile formulation of 2,4-D, MCPA or picloram (a “**volatile chemical**”).

(2) A person must not open the container within 25 m of a crop or of stock that is susceptible to damage from a volatile chemical unless the person has a reasonable excuse for opening the container.

Maximum penalty—20 penalty units.

(3) It is a reasonable excuse for the person to open the container if the person was not reasonably aware that—

- (a) the container held a volatile chemical; and
- (b) the stock or crop was susceptible to damage from a volatile chemical.

Prescribed particulars for register—Act, s 24(1)

31.(1) For section 24(1) of the Act, the following are the prescribed particulars for licensees to be entered in the register—

- (a) the licensee’s name and address;
- (b) the number of the licensee’s licence or renewal of licence;
- (c) the date the licence or renewal was granted;

- (d) if the licence is an aerial distribution contractor licence—
- (i) each pilot in command the licensee has authorised to carry out aerial distribution; and
 - (ii) each aircraft from which aerial distribution is authorised to be carried out under the licence.

(2) The standards officer may also enter other particulars in the register that the standards officer thinks are appropriate.

Division 2—Hazardous areas

Subdivision 1—Preliminary

Definitions for div 2

32. In this division—

“authorised technique”, for ground distribution, means—

- (a) a stem injection; or
- (b) cut stump treatment, frill ringing or basal bark treatment carried out no less than 100 m of a crop that—
 - (i) is not on a property owned by the person for whom the treatment is carried out; and
 - (ii) is susceptible to damage from the treatment.

“distribution permit” means a distribution permit issued by the Board under section 40.

“hazardous area No. 1” see section 33(a).

“hazardous area No. 2” see section 33(b).

“permit condition” means a condition imposed under section 41.

Hazardous areas—Act, s 28(1)

33. For section 28(1)¹⁹ of the Act, the following are declared to be hazardous areas for aerial and ground distribution—

- (a) the area that consists of the Cities of Caloundra and Redcliffe and the Shires of Caboolture, Maroochy, Noosa and Pine Rivers (“**hazardous area No. 1**”);
- (b) the area that consists of the City of Toowoomba, the Town of Dalby and the Shires of Cambooya, Clifton, Jondaryan, Millmerran, Pittsworth, Rosalie, Wambo and Warwick (“**hazardous area No. 2**”).

Subdivision 2—Distribution conditions**Prescribed conditions for distribution**

34. This subdivision prescribes, for section 29²⁰ of the Act, the conditions for a person to carry out aerial or ground distribution in a hazardous area.

No distribution if damage or injury to crop or stock

35. Aerial or ground distribution must not be carried out in a hazardous area with equipment or under meteorological conditions that might reasonably be expected to cause damage or injury to—

- (a) a crop that the person did not intend to treat by the distribution; or
- (b) stock.

¹⁹ The Act, s 28 (Hazardous areas)

²⁰ Under the Act, section 29 (Carrying out of distributions in hazardous areas), a person must not carry out aerial or ground distribution in a hazardous area unless the distribution is carried out under the conditions prescribed by regulation for the area. The maximum penalty for contravention of section 29 is 100 penalty units or 6 months imprisonment.

Smoke generation for aerial distribution

36. Aerial or ground distribution must not be carried out in a hazardous area unless—

- (a) the aircraft used to carry out the distribution has a smoke generating device installed or attached; and
- (b) the device is used to show air movement immediately before and during the distribution.

Conditions for hazardous area No. 1

37.(1) This section applies to hazardous area No 1.

(2) Aerial distribution of picloram or ester formulations of MCPA or 2,4-D (a “**chemical**”) must not be carried out unless the person carrying out the distribution holds a distribution permit that allows the person to carry out the distribution.

(3) Ground distribution of a chemical must not be carried out unless—

- (a) the person carrying out the distribution holds a distribution permit that allows the person to carry out the distribution; or
- (b) the distribution is by an authorised technique.

Conditions for hazardous area No. 2

38.(1) This section applies to hazardous area No 2.

(2) Aerial or ground distribution of ester formulations of 2,4-D must not be carried out.

(3) Aerial distribution of an ester formulation of picloram must not be carried out unless the person carrying out the distribution holds a distribution permit that allows the person to carry out the distribution.

(4) Ground distribution of an ester formulation of picloram must not be carried out unless—

- (a) the person carrying out the distribution holds a distribution permit that allows the person to carry out the distribution; or
- (b) the distribution is by an authorised technique.

Subdivision 3—Distribution permits

Application for a distribution permit

39.(1) A person who holds an aerial distribution contractor licence may apply to the Board for a distribution permit for a stated individual to carry out aerial distribution in a stated hazardous area if—

- (a) the individual is a pilot in command who holds a pilot chemical rating licence; and
- (b) is the person or an employee of the person.

(2) An owner of ground equipment may apply to the Board for a distribution permit for a stated person who holds a commercial operator's licence to carry out ground distribution in a stated hazardous area.

(3) An application must be made—

- (a) in the approved form; and
- (b) at least 10 days before the day on which the applicant proposes to start the distribution applied for.

(4) The Board must grant or refuse the application.

(5) If the Board does not grant or refuse the application within 3 months of the making of the application, it is taken to have—

- (a) refused the application; and
- (b) given the applicant a notice under section 42 refusing the application at the end of the 3 months.

Issue of distribution permit

40. If the Board grants the application, it must issue a distribution permit in the approved form within 14 days.

Distribution permit conditions

41.(1) The Board may impose reasonable conditions for the issuing of the distribution permit.

(2) If the Board imposes a permit condition, it must give the applicant

written notice within 14 days after the imposition of the condition.

(3) The notice must state the following—

- (a) the permit condition;
- (b) that the applicant may appeal against the imposition of the permit condition to a Magistrates Court within 28 days after the applicant receives the notice;
- (d) how to start an appeal.²¹

Notice of refusal

42.(1) If the Board decides to refuse the application, it must give the applicant written notice within 14 days after the making of the decision.

(2) The notice must state the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the applicant may appeal against the decision to a Magistrates Court within 28 days after the applicant receives the notice;
- (d) how to start an appeal.²²

Right of appeal

43.(1) This section applies if the Board—

- (a) gives the applicant for a distribution permit notice of the Board's decision to refuse the application; or
- (b) decides to grant the application, but to impose a permit condition for the issuing of the distribution permit.

(2) The applicant may appeal to a Magistrates Court against the refusal or the imposition of the condition ("**the decision**") within 28 days after the

²¹ For how to start an appeal, see section 43(3) and the Act, section 22A (How to start an appeal).

²² For how to start an appeal, see section 43(3) and the Act, section 22A (How to start an appeal).

applicant receives notice of the decision.

(3) Sections 22A to 22E of the Act apply to the decision as if the decision were a decision of the chief executive to refuse an application for a licence.

(4) This section does not apply to a decision that the court substitutes for the decision.

PART 4—MISCELLANEOUS

False or misleading statements or documents

44.(1) A person must not—

- (a) state anything to the standards officer the person knows is false or misleading in a material particular; or
- (b) give the standards officer a document the person knows is false or misleading in a material particular.

Maximum penalty—20 penalty units.

(2) Subsection (1)(b) does not apply to a person who, when giving the document—

- (a) tells the standards officer, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably get, the correct information—gives the correct information to the standards officer.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state the statement made or the document given was false or misleading to the person's knowledge without stating which.

Fees

45. The fees payable under this Act are in schedule 2.

PART 5—REPEAL

Repeal

46. All subordinate legislation made under the Act, other than this regulation, is repealed.

Expiry of pt 5

47. This part expires the day after it commences.

SCHEDULE 1**AREAS EXCLUDED FROM ACT**

section 3

Aramac Shire

Balonne Shire west of the Narran, Balonne Minor and Balonne Rivers

Barcaldine Shire

Barcoo Shire

The part of Bauhinia Shire bounded by an imaginary line drawn as follows—

- from town of Rolleston in a westerly direction to Mount Hope
- then to Mount Cheops
- then to Mount Sunday
- then to the junction of the Nogoia River and Balmy Creek
- then along the shire boundary in a westerly, southerly, easterly, northerly and westerly direction to the junction with the Comet River
- then upstream along the Comet River in a southerly direction to Town of Rolleston

Belyando Shire west of the top of the Drummond Range

Blackall Shire

Booringa Shire west of the Maranoa and Merivale Rivers and Smith Creek

Boulia Shire

Bowen Shire south of an imaginary line drawn along the top of the Clarke and the Herbert Ranges to the shire boundary

Broadsound Shire west of the top of the Broadsound and the Connors Ranges

SCHEDULE 1 (continued)

Bulloo Shire

Burke Shire

Carpentaria Shire

Cloncurry Shire

Cook Shire

Croydon Shire

Dalrymple Shire

Diamantina Shire

Duaranga Shire north of the Capricorn Highway

Etheridge Shire

Flinders Shire

Herberton Shire west of an imaginary line drawn as follows—

- from the junction of the shire boundary and the Herbert River, upstream along the Herbert River to its junction with Rudd Creek
- then upstream along Rudd Creek to its junction with Tunmirendah Creek
- then upstream along Tunmirendah Creek to its source in the Great Dividing Range and the shire boundary

Ilfracombe Shire

Isisford Shire

Jericho Shire

Livingstone Shire south and west of the top of the Boomer Range

Longreach Shire

The part of Mareeba Shire that is—

- west of Geebung, Lead and Emu Creeks
- south of the Walsh River
- west of the border between the counties of Hodgkinson and

SCHEDULE 1 (continued)

Wrotham

- north of Mitchell River up to its junction with the McLeod River
- north of McLeod River and Middle Creek

McKinlay Shire

Mount Isa City

Murweh Shire

Nebo Shire

Paroo Shire

Quilpie Shire

Richmond Shire

Tambo Shire

Torres Shire

Warroo Shire west of the Maranoa River

Winton Shire

SCHEDULE 2**FEES**

section 45

	\$
1. Pilot chemical rating licence examination	18.50
2. Pilot chemical rating licence	18.50
3. Renewal of pilot chemical rating licence	12.50
4. Aerial distribution contractor licence	18.50
5. Renewal of aerial distribution contractor licence	12.50
6. Commercial operator's licence examination	18.50
7. Commercial operator's licence	18.50
8. Renewal of commercial operator's licence	12.50

ENDNOTES

1. Made by the Governor in Council on 14 May 1998.
2. Notified in the gazette on 15 May 1998.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Primary Industries, Fisheries and Forestry.