

# **CHAPTER 20 PESTS AND PESTICIDES**

## **SUBCHAPTER I**

### **GENERAL PROVISIONS**

#### **20-20-101. Date of manufacture stamped on cotton insecticides.**

- (a) Every person, firm, or corporation bagging any commercial cotton insecticide or poison shall stamp on each bag, or on a tag attached to each bag, the date on which the insecticide or poison was manufactured.
- (b) Any person, firm, or corporation failing or refusing to comply with the requirements of this section shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than five dollars (\$5.00) nor more than one hundred dollars (\$100). Each bag or other container which is shipped without first having placed the date thereon shall be a separate offense.

## **SUBCHAPTER 2**

### **ARKANSAS PESTICIDE USE AND APPLICATION ACT**

#### **20-20-201. Title**

This subchapter shall be cited as the "Arkansas Pesticide Use and Application Act."

#### **20-20-202. Legislative intent.**

- (a) The purpose of this subchapter is to regulate in the public interest the distribution, use, and application of pesticides to control pests as hereinafter defined.
- (b) Pesticides perform a valuable role in protecting man and the environment including agricultural production from insects, rodents, weeds, and other forms of life which may be pests; but it is essential to the public health and welfare that they be used properly to prevent unreasonable adverse effects on man and the environment.
- (c) It is deemed necessary to provide for regulation of the distribution, use, and application of these pesticides.

#### **20-20-203. Definitions.**

As used in this subchapter, unless the context otherwise requires:

- (1) "Animal" means all vertebrate and invertebrate species including, but not limited to, man and other mammals, birds, fish, and shellfish;
- (2) "Beneficial insects" means those insects which, during their life cycle, are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial;
- (3) "Certified applicator" means any individual who is certified under this subchapter to use or supervise the use of any restricted-use pesticide which is restricted to use by certified applicators;
- (4) "Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified

for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or on the property of another person if applied without compensation other than trading of personal services between producers of agricultural commodities;

- (5) "Commercial applicator" means:
  - (A) A certified applicator, whether or not he is a private applicator with respect to some uses, who is engaged in the business and uses or supervises the use of any pesticide classified for restricted use or any other pesticide for any purpose on any lands or property other than as provided by subdivision (4) of this section;
  - (B) Any person engaged in the business of aerial application of seeds or fertilizers on the lands of another;
- (6) "Noncommercial applicator" means firms, persons, or government agencies who use, supervise the use, or demonstrate the use of any pesticide classified for restricted use and who do not qualify as a private applicator under subdivision (4) of this section nor require a commercial applicator's license under subdivision (5) of this section;
- (7) "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;
- (8) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;
- (9) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, receive, deliver, or offer to deliver pesticides in this state;
- (10) "Environment" includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these;
- (11) "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in land. The term shall not include any pressurized hand-sized household apparatus used to apply any pesticide, or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making the pesticide application;
- (12) "EPA" means the United States Environmental Protection Agency;
- (13) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended;
- (14) "Fungus" means any non-chlorophyll-bearing thallophytes, that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts, as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals, and except those on or in processed food, beverages, or pharmaceuticals;
- (15) "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, bees, and flies, and to other allied 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;
- (16) "Labeling" means all labels and all other written, printed or graphic matter -
  - (A) accompanying the pesticide or device at any time; or
  - (B) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications in the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health and Human Services, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.
- (17) "Land" means all land and water areas including airspace and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile, including and used for

transportation;

- (18) "License" or "permit" means a written document issued by the State Plant Board or its authorized agent authorizing the purchase, possession, or use of certain pesticides, restricted-use pesticides, or state restricted-use pesticides;
- (19) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, and they may also be called nemas or eelworms;
- (20) "Person" means any individual, partnership, association, fiduciary, corporation, or any organized group of persons whether incorporated or not;
- (21) "Pest" means:
  - (A) Any insect, rodent, nematode, fungus, weed; or
  - (B) Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism except viruses, bacteria, or other microorganisms on or in living man or other living animals, which EPA declares to be a pest under section 25(c)(1) of FIFRA, or which the State Plant Board declares to be a pest under § 20-20-206(e);
- (22) "Pesticide" means:
  - (A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
  - (B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant;
- (23) "Pesticide dealer" means any person who distributes restricted-use pesticides or pesticides whose uses or distribution are further restricted by the State Plant Board by regulation;
- (24) "Plant regulator" means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of plants or the produce thereof but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments;
- (25) "Restricted-use pesticide" means any pesticide or pesticide use classified for restricted use by the administrator of the EPA;
- (26) "State restricted-use pesticide" means any pesticide or pesticide use which, when used as directed or in accordance with a widespread and commonly recognized practice, the State Plant Board determines, subsequent to a hearing, requires additional restrictions for that pesticide or pesticide use to prevent unreasonable adverse effects on the environment including man, land, beneficial insects, animals, crops, and wildlife other than pests;
- (27) "Supervise" or "under the direct supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person and who is available if and when needed, even though the certified applicator is not physically present at the time and place the pesticide is applied;
- (28) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide;
- (29) "Weed" means any plant which grows where not wanted; and
- (30) "Wildlife" means all living things that are neither human, domesticated nor, as defined in this subchapter, pests including, but not limited to, mammals, birds, and aquatic life.

**20-20-204. Penalties.**

- (a)(1) Any commercial or noncommercial applicator, dealer, or pilot who violates any provision of this subchapter or the regulations adopted thereunder shall be guilty of a misdemeanor and upon conviction shall be punishable for the first offense by a fine of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000), for the second and any additional offense by a fine of not less than five hundred dollars (\$500) and not more than two thousand dollars (\$2,000).
- (2) Any private applicator who violates any provision of this subchapter or the regulations adopted thereunder subsequent to receiving a written warning from the State Plant Board for a prior violation shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than one hundred dollars (\$100) and not more than five hundred dollars (\$500) for each offense. An offense committed more than three (3) years after a previous conviction or written warning shall be considered as a first offense.
- (b) No state court shall allow the recovery of damages from administrative action taken if the court finds that there was probable cause for such action.

**20-20-205. Administration of subchapter by State Plant Board.**

- (a) This subchapter shall be administered by the State Plant Board.
- (b) The functions vested in the State Plant Board by this subchapter shall be considered to be delegated to the employees of the State Plant Board or its authorized representatives.

**20-20-206. State Plant Board Powers and duties.**

- (a) The State Plant Board shall administer and enforce the provisions of this subchapter and shall have authority to issue regulations after a public hearing following due notice to all interested persons to carry out the provisions of this subchapter.
  - (1) Where the State Plant Board finds it necessary to carry out the purpose and intent of this subchapter, regulations may relate to the time, place, manner, amount, concentration, or other conditions under which pesticides may be distributed or applied and may restrict or prohibit use of pesticides in designated areas during specified periods of time to prevent unreasonable adverse effects by drift or misapplication to:
    - (A) Plants, including forage plants, or adjacent or nearby lands;
    - (B) Wildlife in the adjoining or nearby areas;
    - (C) Fish and other aquatic life in waters in reasonable proximity to the area to be treated; and
    - (D) Humans, animals, or beneficial insects.
  - (2) In issuing regulations, the State Plant Board shall give consideration to pertinent research findings and recommendations of other agencies of this state, the federal government, or other reliable sources. The State Plant Board may by regulation require that notice of a proposed application of a pesticide be given to owners or persons in control of lands adjoining the property to be treated or in the immediate vicinity thereof if it finds that the notice is necessary to carry out the purpose of this subchapter.
- (b) For the purpose of uniformity and in order to enter into cooperative agreements, the State Plant Board shall consider as restricted-use pesticides those uses or pesticides classified as such by EPA.
  - (1) In addition, the State Plant Board may declare certain pesticides or pesticide uses as state restricted-use pesticides when after investigation it finds and determines the pesticides or pesticide uses to be injurious to persons, animals, or vegetation other than the pest or vegetation which it is intended to destroy, or otherwise requires additional restrictions under the conditions set forth in § 20-20-203(25).

- (2) The sale or distribution of pesticides for such uses in Arkansas or their use in pest control or other operation is prohibited, except in accordance with such rules and regulations as may be made by the State Plant Board after a public hearing.
- (3) The rules and regulations shall include rules and regulations which prescribe the time when and the conditions under which the materials may be used in different areas of the state.
- (4) The State Plant Board in its rules and regulations may charge inspection, permit, and license fees sufficient to cover the cost of enforcement of this subsection.
- (c) Regulations adopted under this subchapter shall not permit any pesticide use which is prohibited by FIFRA and regulations or orders issued thereunder.
- (d) Regulations adopted under this subchapter as to applicators of restricted-use pesticides as designated under FIFRA shall not be inconsistent with the requirements of FIFRA and regulations promulgated thereunder.
- (e) The State Plant Board, after notice and opportunity for hearing, is authorized to declare as a pest any form of plant or animal life, other than man and other than bacteria, virus, and other microorganisms on or in living man or other living animals, which is injurious to health or the environment.
- (f) In order to comply with section 4 of FIFRA, the State Plant Board is authorized to make such reports to EPA in such form and containing such information as the agency may from time to time require.

**20-20-207. Licenses - Classification - Standards.**

- (a)(1) The State Plant Board may classify or subclassify commercial and noncommercial licenses to be issued under this subchapter as may be necessary for the effective administration and enforcement of this subchapter. The classifications may include but not be limited to:
  - (A) Agricultural;
  - (B) Right-of-way;
  - (C) Forest;
  - (D) Aquatic; and
  - (E) Regulatory pesticide applicators.
- (2) Separate subclassifications may be specified as to ground, aerial, or manual methods used by any licensee to apply pesticides or as to the use of pesticides to control insects and plant diseases, rodents, or weeds.
- (3) Each classification shall be subject to separate testing procedures and requirements.
- (b) The State Plant Board in promulgating regulations under this subchapter shall prescribe standards for the licensing of applicators of pesticides.
  - (1) The standards shall relate to the use and handling of the pesticides or to the use and handling of the pesticide or class of pesticide covered by the individual's license and shall be relative to the hazards involved.
  - (2) In determining standards, the State Plant Board shall consider:
    - (A) The characteristics of the pesticide formulation such as the acute dermal and inhalation toxicity and the persistence, mobility, and susceptibility to biological concentration;
    - (B) The use experience which may reflect an inherent misuse or an unexpected good safety record which does not always follow laboratory toxicological information;
    - (C) The relative hazards of patterns of use such as granular soil applications, ultra low volume or dust aerial applications, or air blast sprayer applications; and

- (D) The extent of the intended use.
- (c) Further, the State Plant Board is authorized to adopt standards in conformance with and at least equal to those prescribed by EPA and such additional standards as it deems necessary.

**20-20-208. Licenses - Requirements generally - Exception.**

- (a) No person shall use or supervise the use of any restricted use pesticide which is restricted to use by certified applicators without that person first complying with the licensing requirements pursuant to § 20-20-209, § 20-20-210, § 20-20-211, or § 20-20-217 or other restrictions as determined by the State Plant Board as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other person, for that specific pesticide use.
- (b) No person working under the direct supervision of a certified applicator in accordance with § 20-20-203(26) shall be considered in violation of this section.

**20-20-209. Licenses - Commercial applicators - Application.**

- (a) No commercial applicator as defined in § 20-20-203(5) shall engage in the business of applying restricted-use or other pesticides or the aerial application of seed or fertilizers to the lands of another at any time without a commercial applicator's license issued by the State Plant Board. Application for a license shall be made in writing to the State Plant Board on a designated form obtained from the State Plant Board. Each application for a license shall contain information regarding the applicant's qualifications, proposed operations, and license classification the applicant is applying for, and shall include the following:
  - (1) The full name of the person applying for the license;
  - (2) If different than subdivision (a)(1) of this section, the full name of the individual qualifying under subsection (b) of this section;
  - (3) If the applicant is a person other than an individual, the full name of the firm, partnership, association, corporation, or group;
  - (4) The principal business address of the applicant in this state or elsewhere;
  - (5) The name and address of a person, who may be the Secretary of State, whose domicile is in this state and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant.
    - (A) Any nonresident applying for a license under this subchapter shall file a written and certified power of attorney designating an Arkansas resident or the Secretary of State as the agent of the nonresident upon whom service of process may be had in the event of any suit against the nonresident person. The power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the State of Arkansas over the nonresident applicant.
    - (B) The Secretary of State shall be allowed such fees therefor as provided by law for designating resident agents;
  - (6) A description of any equipment used by the applicant to apply pesticides; and
  - (7) Any other necessary information prescribed by the State Plant Board.
- (b) The State Plant Board shall not issue a commercial applicator's license until the individual named in subdivision (a)(2) of this section is qualified by passing an examination to demonstrate to the State Plant Board his knowledge of how to apply pesticides under the classifications applied for and his knowledge of the nature and effect of

pesticides he may apply under the classifications. The scope of the examination may be prescribed by regulation.

- (c) If the State Plant Board finds the applicant qualified to apply pesticides in the classifications he has applied for, if the applicant files evidence of financial responsibility required under subsection (d) of this section, if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Administration, and if the applicant has paid the license, test, and equipment fees prescribed by the State Plant Board in its regulations, the State Plant Board shall issue a commercial applicator's license limited to the classifications for which he is qualified.
  - (1) The license shall expire December 31 of each year unless it has been revoked or suspended prior thereto by the State Plant Board for cause. A license shall be automatically invalidated if a commercial applicator is at any time or for any reason left without an individual qualified under subsection (b) of this section.
  - (2) The State Plant Board may limit the license of the applicant to the use of certain pesticides, to certain areas, or to certain types of equipment if the applicant is only so qualified.
  - (3) If a license is not issued as applied for, the State Plant Board shall inform the applicant in writing of the reasons therefor.
- (d)(1) The State Plant Board shall not issue a commercial applicator's license until the applicant has furnished evidence of financial responsibility with the State Plant Board consisting of one (1) of the following:
  - (A) A letter of credit from an Arkansas bank guaranteeing financial responsibility;
  - (B) A surety bond;
  - (C) An escrow account with an Arkansas bank; or
  - (D) An insurance policy or certification thereof of an insurer or surplus lines broker authorized to do business in this state insuring the commercial applicator and any of his agents against liability resulting from the operations of the commercial applicator, provided the insurance is not applied to damages or injury to agricultural crops, plants, or land being worked upon by the commercial applicator.
- (2) The amount of liability as provided for in this section shall not be less than that set by the State Plant Board for each property damage and public liability including loss or damage arising out of actual use of any pesticide. The amount of liability shall be maintained at not less than that sum at all times during the licensing period. The State Plant Board shall be notified ten (10) days prior to any reduction in liability. The State Plant Board shall have authority to set deductible amounts on financial responsibility.
- (3) Should the liability furnished become unsatisfactory, the applicant shall upon notice immediately execute new liability. If he fails to do so, the State Plant Board shall cancel his license and give him notice of the fact, and it shall be unlawful thereafter for the person to engage in the business of applying pesticides until the liability is brought into compliance with the requirements of this section and his license is reinstated.
- (4)(A) Nothing in this subchapter shall be construed to relieve any person from liability for any damages to the person or lands of another caused by the use of pesticides even though the use conforms to the rules and regulations of the State Plant Board.
  - (B) The violation of any of the provisions of this subchapter by any commercial applicator shall be prima facie evidence of negligence on the part of the person, firm, or corporation committing the violation, and the negligence shall be imputable as provided by existing law.
- (e) The State Plant Board may renew any applicant's license under the classification for which the applicant is licensed, subject to reexamination for any additional knowledge that may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology.
- (f) The provisions of this section relating to licenses and requirements for their issuance do not apply to persons applying pesticides for his neighbors provided he operates and maintains pesticide application equipment for his own use, he is not engaged in the business of applying pesticides for hire and does not publicly hold himself out as a pesticide applicator, and he operates his pesticide application equipment only in the vicinity of his owned or rented property and for the accommodation of his neighbors. However, when the person uses or supervises the use of a restricted-use pesticide, the person shall comply with the requirements of § 20-20-210 or § 20-20-211.

**20-20-210. Licenses - Noncommercial applicators.**

- (a) IN GENERAL. No noncommercial applicator as defined in § 20-20-203(6) shall use, supervise the use of, or demonstrate the use of a restricted-use pesticide without a noncommercial applicator's license issued by the State Plant Board.
- (1) Application for the license shall be made on forms obtained from the State Plant Board and shall contain information regarding the applicant's qualifications, the proposed operation, and the license classification applied for, and the full name of the individual qualified or to be qualified by passing the examination described in § 20-20-209(b).
  - (2) If the State Plant Board finds the applicant qualified to apply pesticides in the classifications applied for and if the applicant has paid testing and license fees required by regulation, the State Plant Board shall issue a noncommercial applicator's license limited to the activities and classifications applied for.
  - (3) The license shall expire December 31 of each year unless it has been suspended or revoked prior thereto by the State Plant Board for cause.
  - (4) A license shall be automatically invalidated if a noncommercial applicator is at any time or for any reason left without an individual qualified under this section.
  - (5) If the State Plant Board does not qualify the noncommercial applicator under this section, it shall inform the applicant in writing of the reasons therefor.
  - (6) Fees may be waived for state, municipal, or other governmental agencies and their designated employees qualifying by examination.
  - (7) Noncommercial applicators shall be subject to legal recourse by any person damaged as the result of the application of any pesticide by the applicator. The violation of any of the provisions of this subchapter by any noncommercial applicator shall be prima facie evidence of negligence on the part of the person, firm, or corporation committing the violation and such negligence shall be imputable as provided by existing law.
- (b) LICENSE RENEWAL. The State Plant Board may renew the applicant's license under the classifications for which the applicant is licensed, subject to reexamination for any additional knowledge that may be required to insure a continuing level of competence and ability to use restricted-use pesticides safely and properly due to changing technology.
- (c) EXEMPTION. The provisions of this section shall not apply to persons conducting laboratory research involving restricted-use pesticides, and doctors of medicine and doctors of veterinary medicine applying restricted-use pesticides as drugs or medication during the course of their normal practice.

**20-20-211. Licenses - Private applicators.**

- (a)(1) IN GENERAL. No private applicator as defined in § 20-20-203(4) shall use or supervise the use of any restricted-use pesticide without a private applicator's license issued by the State Plant Board, with such license being conditioned on the applicator complying with the certification requirements determined by the State Plant Board as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons for the pesticide use.
- (2) Application for a license shall be made in writing on a designated form obtained from the State Plant Board and shall contain the name and address of the applicant, the kind of agricultural commodity to be produced, information regarding the applicant's qualifications and proposed operations, and any other necessary

information prescribed by the State Plant Board.

- (b) **CERTIFICATION STANDARDS.** Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or types of pesticides the private applicator is to be certified to use shall be relative to hazards involved. In determining these standards, the State Plant Board shall take into consideration the standards of EPA and is authorized to adopt by regulation these standards.
- (c) **License Issuance.**
  - (1) If the board finds the applicant competent and if the applicant has paid any application fee of ten dollars (\$10.00) for a one-year license or forty-five dollars (\$45.00) for a five-year license, the board shall issue a private applicator's license limited to the operation described in the application.
  - (2) The board shall issue license for periods of one (1) or five (5) years at the option of the application. Each license shall expire one (1) or five (5) years from the issue date of the license, whichever is applicable, unless it has been suspended or revoked prior thereto by the board for cause. In order to support the program, at the end of the 2001 license period, the State Plant Board shall phase in the private applicator license renewal in a way to ensure that the program funding is equally distributed over the licensing period.
  - (3) A license shall be automatically invalidated if a private applicator is at any time or for any reason left without an individual determined to be competent under subsection (b) of this section.
  - (4) If a license is not issued as applied for, the board shall inform the applicant in writing of the reasons therefore.
  - (5) Private applicators shall be subject to recourse by any person damaged as a result of the application of any pesticide by the applicator.
  - (6) The violation of any of the provisions of this subchapter by any private applicator shall be prima facie evidence of negligence on the part of the person, firm, or corporation committing the violation, and such negligence shall be imputable as provided by existing law.

**20-20-212. Licenses - Pilots.**

- (a) It shall be unlawful for any pilot to apply by means of an aircraft any pesticide, seed, or fertilizer in this state unless the pilot shall have a current valid license issued by the State Plant Board.
- (b) The issuance of the license shall be conditioned on his filing an application in the form prescribed by the board stating his name and address, his Federal Aviation Administration commercial or private pilot's certificate number, and his meeting any other conditions as may be set by the board in its regulations.
- (c) The application shall be accompanied by a fee as set by the State Plant Board in its regulations.
- (d) Each pilot's license issued under this section shall expire on December 31 of each year.

**20-20-213. Licenses - Pesticide dealers.**

- (a) It shall be unlawful for any person to act in the capacity of a restricted-use pesticides dealer, or advertise as, assume to act as a dealer of, or distribute any restricted-use pesticide at any time without first having obtained an annual license from the State Plant Board. This license shall limit distribution of restricted-use pesticides only to persons holding a current commercial applicator, noncommercial applicator, private applicator, or dealer's license.
  - (1) A license shall be required for each location or outlet located within this state from which such pesticides are distributed. Any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes a restricted-use pesticide directly into this state shall obtain a pesticide

dealer license for his principal out-of-state location or outlet.

- (2) Pesticide dealer licenses shall expire December 31 of each year.
- (b) Application for a pesticide dealer's license shall be on a form prescribed by the board and be accompanied by a fee as set by the State Plant Board in its regulations.
- (c) Each licensed dealer outlet shall maintain a record of restricted-use pesticides distributed.
  - (1) The record shall contain the name, address, and license number of the commercial applicator, noncommercial applicator, private applicator, or dealer to whom distributed, the date of distribution, and the name and EPA registration number of the restricted-use pesticide distributed.
  - (2) The records shall be kept for a period of two (2) years and shall be available for inspection by the State Plant Board at reasonable times. The State Plant Board shall, upon request in writing, be furnished with a copy of the records immediately by the restricted-use pesticide dealer.
- (d) Provisions of this section shall not apply to a commercial pesticide applicator who sells restricted-use pesticides only as an integral part of this pesticide application service when the pesticides are dispensed only through equipment used for such pesticide application or any federal, state, county, or municipal agency which provides pesticides only for its own programs.
- (e) Each pesticide dealer shall be responsible for the acts of each person employed by him in the solicitation and sale of restricted-use pesticides and all claims and recommendations for use of restricted-use pesticides. The dealer's license shall be subject to denial, suspension, or revocation after a hearing for any violation of this subchapter whether committed by the dealer or by the dealer's officer, agent, or employee.

**20-20-214. Denial, suspension, revocation, or modification of licenses or permits - Grounds.**

- (a) The State Plant Board may suspend, pending inquiry, for not longer than ten (10) days, and, after opportunity for a hearing, may deny, suspend, revoke, or modify any license or permit, or any provision thereof, issued under this subchapter if it finds that the applicant or the holder of a license or permit has committed any of the following acts, each of which is declared to be a violation of this subchapter, or has been convicted of a criminal violation of FIFRA or has been the subject of a final order assessing a civil penalty for a violation of FIFRA.
  - (1) Made false or fraudulent claims through any media misrepresenting the effect of pesticides or methods to be utilized;
  - (2) Made a recommendation for use or used a pesticide in a manner inconsistent with the labeling registered with EPA or the State Plant Board for that pesticide, or in violation of EPA or State Plant Board restrictions on the use of that pesticide;
  - (3) Applied known ineffective or improper pesticides;
  - (4) Operated faulty or unsafe equipment;
  - (5) Operated in a faulty, careless, or negligent manner;
  - (6) Neglected or, after notice, refused to comply with the provisions of this subchapter, the rules adopted hereunder, or of any lawful order of the State Plant Board;
  - (7) Refused or neglected to keep and maintain the records required by this subchapter or to make reports when and as required;
  - (8) Made false or fraudulent records, invoices, or reports;

- (9) Engaged in the business of applying a pesticide on the lands of another without having a commercial applicator's license;
  - (10) Operated unlicensed equipment;
  - (11) Used fraud or misrepresentation in making application for, or renewal of, a license, permit, or certification
  - (12) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license, permit, or certification;
  - (13) Aided or abetted a licensed or an unlicensed person to evade the provisions of this subchapter, conspired with such a licensed or an unlicensed person to evade the provisions of this subchapter, or allowed one's license, permit, or certification to be used by another person;
  - (14) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;
  - (15) Impersonated any federal, state, county, or other government official;
  - (16) Distributed any pesticide labeled for restricted use to any person unless the person or his agent has a valid license to use, supervise the use, or distribute restricted-use pesticides; or
  - (17) Applied any pesticide by aircraft without a pilot's license, or employed a pilot without a license to apply any pesticide by aircraft.
- (b) Any person requiring a license or permit under this subchapter shall be subject to the penalties provided for by § 20-20-204.

**20-20-215. Commercial and noncommercial applicator - Records.**

- (a) Commercial and noncommercial applicator licensees shall keep and maintain routine operational records containing information on the kinds, amounts, uses, dates, and places of application of pesticides.
- (b) The records shall be kept for a period of two (2) years from the date of the application of the pesticide and shall be available for inspection by the State Plant Board at reasonable times.
- (c) The State Plant Board shall, upon request in writing, be furnished with a copy of the records immediately by the commercial or noncommercial applicator.

**20-20-216. Handling of pesticides and containers - Rules and regulations.**

- (a) No person shall transport, store, or dispose of any pesticide or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects or to pollute any waterway in any way harmful to any wildlife therein.
- (b) The State Plant Board may promulgate rules and regulations governing the storing and disposal of pesticides or pesticide containers. In determining these standards, the State Plant Board shall take into consideration any regulations issued by EPA.

**20-20-217. Inspection and licensing of equipment.**

- (a) The State Plant Board is authorized to inspect any equipment used or intended to be used for application of pesticides and may require repairs or other changes before its further use for pesticide application.

- (b) Requirements for equipment may be adopted by regulation.
- (c) Equipment specified by regulation shall be identified by a decal or similar marking furnished by the State Plant Board. The decal or marking shall be affixed in a location and manner upon the equipment as prescribed by the State Plant Board.
- (d) Fees for the decal or similar marking shall be prescribed by the State Plant Board in its regulations.

**20-20-218. Reports of accidents or incidents - Claims.**

- (a) The State Plant Board may by regulation require the reporting of significant pesticide accidents or incidents to a designated state agency.
- (b) Any person claiming damages from a pesticide application shall have filed with the State Plant Board on a form prescribed by the State Plant Board a written statement claiming that he has been damaged.
  - (1) This report shall have been filed within forty-five (45) days after the date that damages occurred. If a growing crop is alleged to have been damaged, the report must be filed prior to the time that twenty-five percent (25%) of the crop has been harvested.
  - (2) The statement shall contain, but shall not be limited to, the name of the owner or lessee of the land on which the crop is grown and for which damage is alleged to have occurred and the date on which the alleged damage occurred.
  - (3) The State Plant Board shall prepare a form to be furnished to persons to be used in these cases and such form shall contain any other requirements as the State Plant Board may deem proper.
  - (4) The State Plant Board shall, upon receipt of the statement, notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility of the damages claimed, and furnish copies of the statements as may be requested.
  - (5) The State Plant Board shall inspect damages whenever possible and when it determines that the complaint has sufficient merit, it shall make this information available to the person claiming damage and to the person who is alleged to have caused the damage.
- (c) The filing of a report or the failure to file a report need not be alleged in any complaint which might be filed in a court of law. The failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action, nor shall the failure to file a report be a violation of this subchapter.
- (d) Where damage is alleged to have occurred, the claimant shall permit the State Plant Board, the licensee, and his representatives, such as his insurer, to observe within reasonable hours the lands or nontarget organism alleged to have been damaged in order that the damage may be examined. Failure of the claimant to permit observation and examination of the damaged lands shall automatically bar the claim against the licensee.

**20-20-219. Enforcement.**

- (a)(1) For the purpose of carrying out the provisions of this subchapter, the State Plant Board may enter upon any public or private premises at reasonable times, in order to:
  - (A) Have access for the purpose of inspecting any equipment subject to this subchapter;
  - (B) Inspect or sample lands actually or reported to be exposed to pesticides, and lands from which the pesticides may have originated;
  - (C) Inspect storage or disposal areas;
  - (D) Inspect or investigate complaints of injury to humans or land;

- (E) Sample pesticides being applied or to be applied; and
  - (F) Observe the use and application of pesticides.
- (2) Should the State Plant Board be denied access to any land where access was sought for the purposes set forth in this subchapter, he may apply to any court of competent jurisdiction for a search warrant authorizing access to the land for the purposes set forth in this subchapter. The court may, upon such application, issue the search warrant for the purposes requested.
- (b) The State Plant Board, with or without the aid and advice of the prosecuting attorney, is charged with the duty of enforcing the requirements of this subchapter and any rules or regulations issued pursuant to it. In the event a prosecuting attorney fails or refuses to act on behalf of the State Plant Board, the Attorney General may so act.
- (c) The State Plant Board is authorized to apply to any court of competent jurisdiction for, and the court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provisions of this subchapter, or of the rules and regulations made under authority of this subchapter, the injunction to be without bond.

**20-20-220. Subpoenas authorized.**

The State Plant Board may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records anywhere in this state in any hearing affecting the authority or privilege granted by a license, certification, or permit issued under the provisions of this subchapter.

**20-20-221. Judicial review.**

- (a) Any person aggrieved by any action of the State Plant Board may obtain a review thereof by filing in the circuit court within thirty (30) days of notice of the action a written petition praying that the action of the State Plant Board be set aside.
- (b) A copy of the petition shall immediately be delivered to the State Plant Board, and within thirty (30) days thereafter, the State Plant Board shall certify and file in the court a transcript of any record pertaining thereto, including a transcript of evidence received. The court shall then have jurisdiction to affirm, set aside, or modify the action of the State Plant Board, except that the findings of the State Plant Board as to the facts, if supported by substantial evidence, shall be conclusive.

**20-20-222. Intergovernmental cooperation.**

The State Plant Board may cooperate, receive grants-in-aid, and enter into agreements with any agency of the federal government, of this state or its subdivisions, or with any agency of another state to obtain assistance in the implementation of this subchapter, in order to:

- (1) Secure uniformity of regulations;
- (2) Cooperate in the enforcement of the federal pesticide control laws through the use of state or federal personnel and facilities and to implement cooperative enforcement programs;
- (3) Develop and administer state plans for licensing of certified applicators consistent with federal standards;
- (4) Contract for training with other agencies for the purpose of training licensed applicators;
- (5) Contract for monitoring pesticides for the national plan;

- (6) Prepare and submit state plans to meet federal certification standards, as provided for in Section 4 of FIFRA; and
- (7) Regulate certified applicators.

**20-20-223. Reciprocal agreements.**

The State Plant Board may waive all or part of the examination requirements provided for in §§ 20-20-209 -20-20-211 and 20-20-217 on a reciprocal basis with any other state which has substantially the same standards and so long as out-of-state applicators are made subject to enforcement procedures provided in this subchapter to the same extent as those applicators examined and certified in this state.

**20-20-224. Information and instruction.**

The State Plant Board may, in cooperation with the University of Arkansas or other educational institutions, publish information and conduct short courses of instruction in the areas of knowledge required by this subchapter or the regulations adopted pursuant to it.

**20-20-225. Disposition of funds.**

All moneys received by the State Plant Board under the provisions of this subchapter and the regulations adopted thereunder shall be deposited in the State Plant Board Fund of the State Treasury and be used for carrying out the provisions of this subchapter.

**20-20-226. State preemption.**

- (a) Except as otherwise authorized in this subchapter, no city, county, or other political subdivision of the state shall adopt any ordinance, rule, or regulation regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of pesticides.
- (b) This section shall not affect the validity of any ordinance, rule, or regulation regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of pesticides adopted prior to March 1, 1993.

**20-20-227. Use inconsistent with pesticide labeling.**

Any person who uses a pesticide in a manner inconsistent with its labeling is subject to the jurisdiction of the State Plant Board and its statutes, rules and order over which it has regulatory authority and may be subject to denial, suspension, revocation or modification of a license or permit under Section 20-20-214. Any person who knowingly uses a pesticide in a manner inconsistent with its labeling is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

# Regulations Under Act 389 of 1975 as Amended

## **Regulation No. 1. Categories of Applicators**

The following categories have been established for licensing and applicator certification purposes:

### I. Commercial Applicator Categories

- A. Agricultural Pest Control
  - (1). Plants
    - 1. Agricultural Produce and Lands Pest Control
  - (2). Animals
- B. Forest Pest Control
  - (1). Wood Treatment
- C. Right-of-Way Pest Control
- D. Aquatic Pest Control
- E. Demonstration and Research Pest Control
- F. Public Health Pest Control
- G. Seed Treatment
- H. Regulatory Pest Control

### II. Non-Commercial Applicator Categories Same as Commercial Applicator

## **Regulation No. 2. Commercial Applicator**

- VII. All herbicide spray applications made by air to field crops (does not include forestry) shall be done in accordance with the following requirements unless otherwise required by the Plant Board:
  - (A) When applying a herbicide, an aircraft may not exceed 145 miles per hour. Higher airspeeds may be utilized if the operator can document that the setup combination and airspeed selected will allow compliance with the spray classification as identified in paragraph (1)(i) below. Such compliance must be verified by a person or entity that is independent of the applicator/firm, has specific education and training and experience in the application of herbicides to field crops, and whose curriculum vitae is acceptable to the Plant Board. Documentation of such verification must be recorded on a form provided by the Plant Board. Upon the effective date of these regulations, said documentation must be provided to the Plant Board by June 2, 2002. All subsequent verification documentation must be provided to the Plant Board prior to use of the setup.
  - (B) The spray boom height at the time of product release shall not exceed 15 feet above the crop canopy. Where obstructions in or adjacent to the field of application will not safely allow application at the 15 foot level, a higher elevation may be used in the vicinity of such obstructions. However, where the product label imposes more restrictive application elevations, those elevations must be complied with.
  - (C) Herbicide applications may not be made under conditions where the spray may possibly be entrained in an inversion layer. As an indicator that an inversion is unlikely to exist, the applicator shall record the ambient temperature measured at the airstrip from which he/she is working for each application. Inversions are much less likely to exist if the temperature has increased three (3) degrees Fahrenheit from the morning low at the
  - (D) time of application for applications made before noon or has not decreased more than three (3) degrees Fahrenheit from the afternoon high for applications made after noon. The applicator should also use other



the effective date of these regulations, said documentation must be provided to the Plant Board by June 2, 2002. All subsequent verification documentation must be provided to the Plant Board prior to use of the setup.

- (E) The application rate must be a minimum of two (2) gallons per acre unless otherwise required by the label.
- (F) Drift reduction nozzles that produce medium or greater spray classifications must be used .
- (G) Where the product label is more restrictive than these regulations, the label must take precedence.

III All commercial pesticide applications made by ground must be done under the supervision (as defined in ACA 20-20-203(27) of a certified, licensed commercial applicator. The driver/operator of the vehicle must be either a certified, licensed commercial applicator licensed by the Plant Board or a licensed Commercial Applicator Technician licensed by the Plant Board.

- (A) A Commercial Applicator Technician works under the supervision of a certified, commercial applicator.
- (B) A Commercial Applicator Technician must be licensed by the Plant Board. Said license shall expire on December 31<sup>st</sup> of each year.
- (C) To obtain a Commercial Applicator Technician (CAT) license the applicant must provide proof of completion of the CAT ground application training course established by the Plant Board within four (4) months of application and have paid the application review fee as specified by the Plant Board.

IV License application review fees shall be as follows:

- |  |       |
|--|-------|
| (A) License to apply seed, fertilizer, and pesticides      | \$100 |
| Plus for each aircraft or article of ground equipment      | \$20  |
| (B) Individual Commercial Applicator license, per category | \$35  |
| (C) Seed treatment license                                 | \$100 |
| If restricted use pesticides used - additional             | \$35  |
| (D) Commercial Applicator Technician license               | \$25  |

A fee of \$5 from each license issued to a CAT by the Plant Board shall be transferred to the University of Arkansas Cooperative Extension Service for the purpose of developing and providing CAT training subject to approval by the Plant Board.

V Financial Responsibility - Financial responsibility shall be established in one of the four following ways: (1) a letter of credit from an Arkansas Bank guaranteeing financial responsibility; (2) a surety bond; (3) an escrow account with an Arkansas Bank; or (4) an insurance policy or certification thereof. The minimum financial responsibility shall be \$100,000. The deductible clause shall not exceed \$5,000 for an insurance policy. Exemption: This requirement shall not apply to Seed Treatment Applicators and Regulatory Pest Control Applicators.

VI Decals - A decal shall be issued for each air craft or article of ground equipment upon approval of application. Such decal shall be attached to or displayed on the aircraft and/or article of ground equipment prior to its use under the license granted.

**Regulation No. 3. Non-Commercial Applicator’s License.**

The review fee for a Non-Commercial Applicator’s license shall be \$35 per category. At the discretion of the

ASPB Director this fee may be waived for Cooperative Extension employees actively involved in supporting the ASPB's regulatory programs.

#### **Regulation No. 4. Private Applicator License.**

##### **I. Initial Certification**

All first time applicants for a Private Applicator's license must have been "certified" within the 12 months prior to license application. Certification for a first time applicant can be obtained in one of two ways:

- (A) Applicant may attend the Pesticide Applicator Training offered by the County Cooperative Extension Office each year.
- (B) Applicant may take an examination given by the State Plant Board. Applicant must achieve a minimum score of 70% of total possible points.

This certification will be valid for one five-year license or five consecutive one-year licenses. In no case shall a certification make a person eligible for licensure in excess of five years.

##### **II Recertification**

All applicants for a subsequent five year Private Applicator license must have been "recertified" within the 12 months prior to license application. All applicants for a one year license must have been "recertified" within the 48 months prior to license application. Recertification can be obtained in one of two ways:

- (C) Applicant may attend the Pesticide Applicator Training offered by the County Cooperative Extension Office each year.
- (B) Applicant may take an examination given by the State Plant Board. Applicant must achieve a minimum score of 70% of total possible points.

III One other option available for recertification is that the applicant may attend other approved training classes that address the certification requirements for private applicator certification cited in 40 CFR, Part 171.5. Each approved class will be assigned a point value by the Plant Board and at least five (5) points must be accumulated during the 36 months prior to license application. Course facilitators must provide the Plant Board with a list of all who attended the class that want the class points to be applied to private applicator recertification. The applicant will be required to fill out a course verification form for each class and submit it with their private applicator license application form.

Recertification will be valid for one five-year license or five consecutive one-year licenses. In no case shall recertification make a person eligible for licensure in excess of five years.

IV The fee for private applicator's license shall be as specified in the Arkansas Pesticide Use and Application Act of 1975, as amended.

V. The license will permit the certified private applicator to purchase and use restricted use pesticides in any category under the amended FIFRA as well as state restricted pesticides such as hormone-type herbicides.

VI A fee of \$2.00 from each license issued to a private applicator by the Plant Board for each year of the license period shall be transferred to the University of Arkansas Cooperative Extension Service for the purpose of developing and providing training for certification and recertification of private pesticide applicators in accordance with the requirements of 40CFR, Part 171.5.

VII The transfer of such funds shall be made quarterly by a cooperative agreement contract between the State

Plant Board and the University of Arkansas Cooperative Extension Service.

VIII Private applicators using aircraft to apply herbicides must comply with the criteria set out for commercial applicators in Regulation 2, Paragraph 1 of these regulations

**Regulation No. 5. Pilot License**

Fee - \$35.00

**Regulation No. 6. Pesticide Dealer's License**

Fee - \$65.00 for dealers handling restricted use pesticides and state restricted pesticides. Note: If license-holding dealers have branches which sell or distribute restricted use pesticides, each branch must have a dealer's license.

The enactment of regulations under this Act is not intended nor shall they have the effect of repealing regulations promulgated under the authority of Acts 410 or 488 of 1975.

### Quinclorac Use Restrictions

1. The buffer zones in the table below shall apply to Quinclorac herbicide applications:

Herbicide Treatment Options	Application Equipment	Buffer Zones	
		When winds are blowing in the direction of incorporated towns or commercial plantings of the solanaceae family.	When winds are NOT blowing in the direction of incorporated towns or commercial plantings <sup>1</sup> of the solanaceae family.
<b>a.</b> Water diluted spray of Quinclorac herbicide tank-mixed with emulsifiable concentrate (EC) formulation herbicides such as: Ⓐtam M-4 EC    Ⓐrroso 3+3 EC Ⓐropanil EC    Ⓐrdram 8E Ⓐbolish 8E    Ⓐolero EC	Aircraft Spray Wind Speed 3 to 8 mph	4 miles	1 mile
	Ground Spray Wind Speed 3 to 8 mph	1 mile	1/2 mile
<b>b.</b> Water diluted spray of Quinclorac herbicide applied in water alone or tank-mixed with emulsifiable concentrate formulation free herbicides such as: Ⓐtam 80EDF            Ⓐsagran Ⓐerra Propanil 80DF    Ⓐlazer Ⓐwham EZ, Super Wham    Ⓐstorm Ⓐpentagon 60 WDG        Ⓐondax	Aircraft Spray Wind Speed 3 to 8 mph	1 mile	1 mile
	Ground Spray Wind Speed 3 to 8 mph	1/2 mile	1/2 mile

<sup>1</sup> Exemption: In areas where cities have annexed blocks of agricultural land, water diluted sprays of Quinclorac may be used within or adjacent to the city limits, provided the application site is no closer than 1/2 mile to subdivisions when using ground equipment or 1 mile to subdivisions when using aircraft and no closer than 1/4 mile to established plants of the solanaceae family or established/emerged cotton.

2. No water diluted spray of Quinclorac herbicide shall be applied closer than 1/4 mile by any means to established/emerged cotton, noncommercial plantings of the solanaceae family, or closer than 1/2 mile by aircraft if the wind is blowing in the direction of such plants.

3. No water diluted spray of Quinclorac herbicide shall be applied closer than 1 mile by aircraft or 1/2 mile by ground equipment to established, certified commercial plantings of the solanaceae family (>1,000 plants each kind) statewide.

4. In addition to the above statewide requirements, the following additional restrictions shall apply to Poinsett County.

- a. No water diluted spray of Quinclorac herbicide shall be applied in an area from one mile west of Highway #1 to one mile east of Highway #163 from the Craighead-Poinsett County line to the Cross-Poinsett County line.
- b. Water diluted spray of Quinclorac herbicide shall be applied only by ground equipment in the area of Poinsett County from one mile west of Highway #1 to two miles west of Highway #1 and only by ground equipment in the area of Poinsett County from one mile east of Highway #163 to Ditch #10, from the Craighead-Poinsett County line to the Cross-Poinsett County line.
- c. No water diluted spray of Quinclorac herbicide shall be applied within 1/2 mile with ground equipment or 1 mile by aircraft of commercial plantings of the solanaceae family and towns. This buffer is extended to one mile for ground

application and two miles for aerial application when Quinclorac herbicide is mixed with emulsifiable concentrate formulation herbicides.

5. The buffer zones defined in paragraph one (1) (b) shall apply to tank mixes of water diluted sprays of Quinclorac and EC products for which the EC manufacturer has provided the Plant Board with atomization study data from a research entity acceptable to the Plant Board that shows that the product does not produce more “fines” (percent of total spray volume in droplets <105Fm) than water.
6. All applications of Quinclorac shall be made in accordance with the applicable drift minimization recommendations of the Spray Drift Task Force.
7. Both air and ground application equipment shall be set up for application of Quinclorac in such a way that generation of spray droplets less than 105 microns in size is less than 5% of the total volume. The spray nozzle size classification must be designated as “coarse” by the British Crop Protection Council.
8. Quinclorac may not be sold to persons that do not possess a current Private, Commercial or Non-Commercial Applicator’s License.