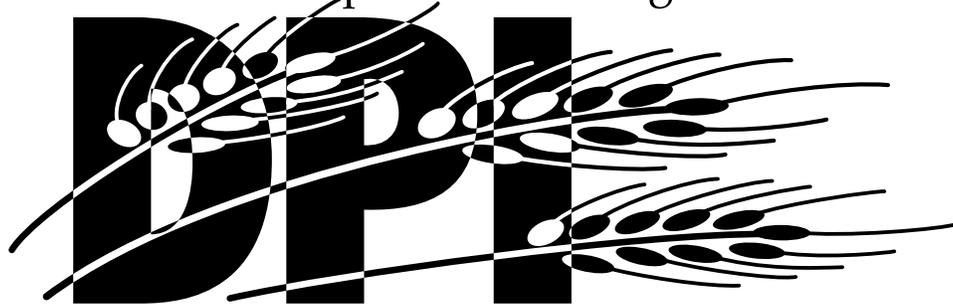


Colorado Department of Agriculture



DIVISION OF PLANT INDUSTRY

TITLE 35 ARTICLE 10

PESTICIDE APPLICATORS'
ACT

COLORADO DEPARTMENT OF AGRICULTURE
Division of Plant Industry
700 Kipling Street, Suite 4000
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ARTICLE 10

Pesticide Applicators' Act

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35-10-101. Short title. This article shall be known and may be cited as the "Pesticide Applicators' Act".

35-10-102. Legislative declaration. The general assembly hereby finds and declares that pesticides perform a valuable function in controlling insects, rodents, weeds, and other forms of life which may be injurious to crops, livestock, and other desirable forms of plant and animal life, to structures, and to individuals. The general assembly further finds and declares that pesticides contain toxic substances which may pose a serious risk to the public health and safety and that regulation of pesticide use is necessary to prevent adverse effects on individuals and the environment.

35-10-103. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Certified operator" means an individual who mixes, loads, or applies any pesticide, including restricted use pesticides, under the supervision of a qualified supervisor.
- (2) "Commercial applicator" means any person who engages in the business of applying pesticides or operating a device for hire.
- (3) "Commissioner" means the commissioner of agriculture.
- (4) "Department" means the department of agriculture.
- (5) "Device" means any instrument or contrivance, other than a firearm, intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, viruses, or other microorganisms on or in living man or other living animals); except that "device" shall not include equipment used for the application of pesticides when sold separately therefrom.
- (6) "EPA" means the United States environmental protection agency.
- (7) "General use pesticide" means any pesticide so designated by the commissioner or the administrator of the EPA.
- (8) "Limited commercial applicator" means any person engaged in applying pesticides in the course of conducting a business; except that such application shall be only in or on property owned or leased by the person or the person's employer.
- (8.5) "Local government" means a county, home rule county, city, town, city and county, home rule city, special district, or other political subdivision of the state.
- (9) "Pest" means any insect, rodent, nematode, fungus, weed, or 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 in other living animals) which the commissioner or the administrator of the EPA declares to be a pest.
- (10) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; except that the term "pesticide" shall not include any article that is a "new animal drug" as designated by the United States food and drug administration.
- (11) "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; except

that "plant regulator" shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, "plant regulator" shall not be required to include any of those nutrient mixtures or soil amendments which are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, which are not for pest destruction and which are nontoxic and nonpoisonous in the undiluted packaged concentration.

(12) "Public applicator" means any agency of the state, any county, city and county, or municipality, or any other local governmental entity or political subdivision which applies pesticides.

(13) "Qualified supervisor" means any individual who, without supervision, evaluates pest problems, or recommends pest controls using pesticides or devices, or mixes, or loads, or applies any pesticide, or sells application services, or operates devices, or supervises others in any of these functions.

(14) "Restricted use pesticide" means any pesticide designated as a restricted or limited use pesticide by the commissioner or as a restricted use pesticide by the administrator of the EPA.

(15) (a) "Technician" means any individual who:

(I) Uses a device under the supervision of a qualified supervisor;

(II) Mixes, loads, or applies general use pesticides under the supervision of a qualified supervisor, mixes or loads restricted use pesticides under the supervision of a qualified supervisor, or applies restricted use pesticides under the on-site supervision of a qualified supervisor; or

(III) Evaluates pest problems, recommends products or treatments for pest problems, or sells application services under the supervision of a qualified supervisor.

(b) "Technician" does not include any individual whose duties are solely clerical or janitorial or otherwise completely disassociated from pest control.

(16) "Under the on-site supervision of" refers to work performed by an individual acting under the instruction and control of a qualified supervisor who is present at the work site at the time the work is being performed.

(17) "Under the supervision of" refers to work performed by an individual acting under the instruction and control of a qualified supervisor, even if the qualified supervisor is not physically present at the work site at the time the work is performed.

(18) "Use" means all aspects of the handling of pesticides, including but not limited to the mixing, loading, application or administration, spill control, and disposal of a pesticide or its container.

35-10-104. Scope of article.

(1) The following shall be subject to the provisions of this article and to any rules and regulations adopted pursuant thereto:

(a) Any commercial applicator;

(b) Any limited commercial applicator or any public applicator which applies restricted use pesticides, whether or not a particular application involves restricted use or general use pesticides; except that this article shall not apply to any limited commercial applicator or public applicator which does not apply restricted use pesticides, unless such limited commercial or public applicator requests that it be subject to the provisions of this article pursuant to paragraph (c) of this subsection (1); or

(c) Any limited commercial applicator or public applicator which requests, in the form and manner specified by the commissioner, that it be subject to the provisions of this article and to any rules and regulations adopted pursuant thereto.

(2) The provisions of this article shall not apply to:

(a) Any person who performs the following acts for the purposes of producing any agricultural commodities on property owned or rented by him or his employer or, if such acts are performed without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person:

(I) The operation of a device or the supervision of such operation; (II)

The use or supervision of the use of any pesticides except those designated for limited use by the commissioner pursuant to section 35-9-108 (5);

(b) Any individual who operates a device or uses any pesticide or who supervises, evaluates, or recommends such acts on the property of another without compensation; or

(c) Any individual who uses a device or applies any pesticide or who supervises such acts at his home or on his property, when such use or supervision is not compensated and is not in the course of conducting a business. Nowhere is it the intent of the general assembly to prevent private citizens from using legal chemicals for the control of weeds and pests on their own property.

35-10-105. Commercial applicator - business license required. Any person acting as a commercial applicator must possess a valid commercial applicator business license issued by the commissioner in accordance with this article and any rules and regulations adopted pursuant thereto. A commercial applicator business license may only be issued for the class or subclass of pesticide application in which the qualified supervisor employed or otherwise retained by the commercial applicator is licensed.

35-10-106. Commercial applicator - license requirements - application - fees.

(1) As requisites for licensure, the applicant for a commercial applicator business license shall:

(a) Obtain liability insurance in the minimum amount of four hundred thousand dollars with the provision that such policy shall not be cancelled unless written notice is provided to the commissioner at least ten days prior to such cancellation; except that liability insurance policies containing a so-called "pollution exclusion" shall satisfy this paragraph (a);

(b) Employ or secure the services by documented agreement of a qualified supervisor who is licensed in the class or subclass of pesticide application performed by the business;

(c) Provide verifiable training to all technicians in his employ according to standards adopted by the commissioner;

(d) Identify all pesticide application equipment in the form and manner prescribed by the commissioner;

(e) If it engages in aerial application of pesticides, possess a certificate issued by the federal aviation administration as specified in license qualifications adopted by the commissioner.

(2) Each applicant for a commercial applicator business license shall submit an application providing all information in the form and manner the commissioner shall designate, including, but not limited to, verification that the applicant has complied with subsection (1) of this section.

(3) (a) If a commercial applicator operates under more than one business name from a single location, the name of each such business providing services related to pesticide application shall be listed with the commissioner in the form and manner he shall designate. The commissioner may require that a separate fee be paid for each business name so listed.

(b) No additional commercial applicator business license shall be required for such additional business names.

(c) If a commercial applicator operates under more than one business name from a single location, the applicator must maintain separate pesticide application records pursuant to section 35-10-111 and separate business records for each such business name.

(4) Each applicant for a commercial applicator business license shall pay a license fee in an amount determined by the commissioner.

(5) Each commercial applicator business license shall expire on January 1 of each year.

(6) Each licensee shall report to the commissioner, in the form and manner the commissioner shall designate, any change to the information provided in such licensee's application or in such reports previously submitted, within fifteen days of such change.

35-10-107. Commercial applicator business license - renewals.

(1) Each commercial applicator shall make an application to renew its business license on or before the first working day of January for the year of renewal. Said application shall be in the form and manner prescribed by the commissioner and shall be accompanied by the renewal fee.

(2) If the application for renewal is not postmarked on or before the first working day of January for the year of renewal, a penalty fee of ten percent of the renewal fee shall be assessed and added to the renewal fee. No license shall be renewed until the total fee is paid.

(3) If the application and fee for renewal are not postmarked on or before February 1, the business license shall not be renewed, and the commercial applicator shall apply for a new license.

35-10-108. Commercial applicators - invoice notice. Commercial applicators shall include a statement in conspicuous type on each customer invoice that indicates that commercial applicators are licensed by the department. Said statement shall be exactly prescribed by rule adopted by the commissioner.

35-10-109. Limited commercial and public applicators - no business license required. No business license shall be required for limited commercial or public applicators; except that the commissioner may require such applicators to register with the department in the form and manner he shall designate and to pay an administrative fee in an amount which he shall determine.

35-10-110. Limited commercial and public applicators - requirements for operation.

(1) For each class or subclass of pesticide application a limited commercial or public applicator applies, it shall employ at least one qualified supervisor who is licensed in that class or subclass of pesticide application or shall secure the services of such qualified supervisor by documented agreement.

(2) Notwithstanding the provisions of subsection (1) of this section, no public applicator shall be required to pay licensing or certification fees for any qualified supervisor or certified operator which it may employ.

(3) Every limited commercial or public applicator shall provide verifiable training to all technicians in its employ according to standards adopted by the commissioner. Such standards shall be identical to those adopted by the commissioner with respect to commercial applicators pursuant to section 35-10-106 (1) (c).

(4) If the commissioner, pursuant to section 35-10-109, establishes a registry of limited commercial and public applicators, he may also require that each applicator report, in the form and manner the commissioner shall designate, any change to the information provided by such applicator to the registry or in any such reports previously submitted, within fifteen days of said change.

35-10-111. Record-keeping requirements. Each commercial, limited commercial, and public applicator shall keep and maintain records of each pesticide application in the form and manner designated by the commissioner. Such records shall be retained for a period of three years from the date of the pesticide application and shall be kept at the address specified in the application for the commercial applicator's business license or, in the case of limited commercial and public applicators, at the address specified in the registry authorized in section 35-10-109.

35-10-112. Notification requirements - registry of pesticide-sensitive persons - preemption.

(1) (a) The commissioner shall promulgate rules and regulations for the establishment of a registry of pesticide-sensitive persons to be maintained by the department. Pesticide-sensitive persons may apply to be placed on the registry provided they can provide proof of medical justification by a physician licensed in Colorado in the form and manner prescribed by the commissioner. This letter needs to be updated every two years. Said registry shall be updated at least annually and the published registry shall be provided to all commercial, limited commercial, and public applicators on record with the commissioner. Names added after the most recently published registry shall be available from the department upon request.

(b) The commissioner shall provide standardized notification signs to any person accepted for the registry for such person to post on his property. These signs shall be designed, manufactured, and distributed solely by the department.

(c) A commercial, limited commercial, or public applicator, prior to applying a pesticide in any turf or ornamental category, shall take reasonable actions to give notice of the date and approximate time of any such pesticide application, prior to the application, to any person who resides on property which abuts the property to be treated and whose name is on the published registry. If two property sites would be considered to be abutting but for the fact that such sites are separated by an alley, for the purposes of this section such sites are deemed to be abutting.

(2) (a) Any commercial, limited commercial, or public applicator making a pesticide application in any turf or ornamental category shall, at the time of application, post a sign notifying the public of the application, such sign to be posted at any conspicuous point or points of entry to the property receiving the application.

(b) Any commercial, limited commercial, or public applicator making a pesticide application in any aquatic category shall post, at the time of application, a sign notifying the public of the application, such sign to be posted in the manner designated by the commissioner through the adoption of rules and regulations pursuant to article 4 of title 24, C.R.S.

(c) The notice-of-application signs specified in paragraphs (a) and (b) of this subsection (2) shall be water resistant and shall measure at least four inches in height and five inches in width. The sign shall contain the following information in black lettering and symbols on a bright yellow background:

(I) The word "WARNING", in at least sixty-point bold-faced type;

(II) The words "PESTICIDES APPLIED", in at least twenty-four-point bold-faced type;

(III) The symbol of a circle at least two inches in diameter with a diagonal slash over an adult, child, and dog; and

(IV) The name of the commercial, limited commercial, or public applicator which made the application, in at least eighteen-point bold-faced type.

(d) If a commercial or limited commercial applicator makes a pesticide application on a commercial property site pursuant to paragraphs (a) or (b) of this subsection (2) and an owner of the site or an agent of an owner of the site is not present at the site, then, in addition to the information required by paragraph (c) of this subsection (2), the notice-of-application signs posted by the applicator at the site shall also contain the following information in black lettering and symbols on a bright yellow background in at least eighteen-point bold-faced type:

(I) The telephone number of the applicator;

(II) The name of the pesticide applied; and

(III) The date the pesticide was applied.

(3) No county, city and county, municipality, home rule county, home rule city and county, or home rule municipality shall enact or impose any notification requirements upon commercial applicators which are more stringent than those imposed by this article; except that each county, city and county, municipality, home rule county, home rule city and county, and home rule municipality shall retain the authority to impose any notification requirements upon private individuals, property owners, and the general public. Any such notification requirement imposed by any county, city and county, municipality, home rule county, home rule city and county, or home rule municipality on private individuals, property owners, or the general public shall not be held to be applicable to any commercial applicator, nor shall any commercial applicator be exposed to any liability for a failure to comply with any such notification requirement.

35-10-112.5. Statewide uniformity of pesticide control and regulation - exceptions.

(1) The general assembly hereby determines that the citizens of this state benefit from a system of safe, effective, and scientifically sound pesticide regulation. The general assembly further finds that a system of pesticide regulation that is consistent and coordinated, that creates statewide uniform standards, and that conforms with both state and federal technical standards and requirements is essential to the public health, safety, and welfare, and finds that local regulation of pesticides that is inconsistent with and adopts different standards from federal and state requirements does not assist in achieving these benefits. The general assembly also finds and declares that, through statute and regulation, the state has created a system of pesticide regulation based upon scientific standards that protects the citizens of this state. The general assembly expressly finds and declares that pesticide regulation is a matter of statewide concern.

(2) No local government shall adopt or continue in effect any ordinance, rule, resolution, charter provision, or statute regarding the use of any pesticide by persons regulated by this article or federal law and pertaining to:

(a) Any labeling or registration requirements for pesticides, including requirements regarding the name of the product, the name and address of the manufacturer, and any applicable registration numbers;

(b) Use and application of pesticides by persons regulated by this article or federal law, including, but not limited to, directions for use, classification of pesticides as general or restricted use, mixing and loading, site of application, target pest, dosage rate, method of application, application equipment, frequency and timing of applications, application rate, reentry intervals, worker specifications, container storage and disposal, required intervals between application and harvest of food or feed crops, rotational crop restrictions, and warnings against use on certain crops, animals, or objects or against use in or adjacent to certain areas;

(c) Except as specifically provided in this article, any warnings and precautionary statements, notifications, or statements of practical treatment; or

(d) Licensure, training, or certification requirements for persons regulated under this article, including any insurance and record-keeping requirements.

(3) (a) Nothing in this article may be construed to limit the authority of a local government as defined by state law to:

(I) Zone for the sale or storage of any pesticide, provide or designate sites for disposal of any pesticide or pesticide container, adopt or enforce building and fire code requirements, regulate the transportation of pesticides consistently with and in no more strict of a manner than state and federal law, adopt regulations pursuant to a storm water management program that is consistent with federal or state law, or adopt regulations to protect surface or groundwater drinking water supplies consistent with state or federal law concerning the protection of drinking water supplies;

(II) Take any action specifically authorized or required by any federal or state law or regulation with respect to pesticides, or to take any action otherwise prohibited by this article in order to comply with any specific federal or state requirement or in order to avoid a fine or other penalty under federal or state law;

(III) Regulate the use of pesticides on property owned or leased by the local government;

(IV) Issue local general occupational licenses to persons regulated by this article.

(b) This subsection (3) may not be construed to authorize a local government to utilize the authority to zone, to provide or designate disposal sites, to adopt and enforce building and fire codes, or to regulate the transportation of pesticides as described in paragraph (a) of this subsection (3) to directly or indirectly regulate or prohibit the application of pesticides by persons regulated by this article or by federal law.

(c) Nothing in this article shall be construed to be an implicit grant of authority to a local government that is not otherwise granted by state law.

(4) Any local government that promulgates an ordinance that concerns pesticides, that is promulgated pursuant to section 31-15-707 (1) (b), C.R.S., or that is promulgated pursuant to any authority described in paragraph (a) of subsection (3) of this section concerning pesticides shall file the following with the department of agriculture:

(a) A certified copy of the ordinance; and

(b) A map or legal description of the geographic area that the local government intends to regulate under the ordinance.

35-10-113. Qualified supervisor - license required. Any individual acting as a qualified supervisor must possess a valid qualified supervisor license issued by the commissioner in accordance with this article and any rules and regulations adopted pursuant thereto.

35-10-114. Certified operator - license required. Any individual acting as a certified operator shall possess a valid certified operator license issued by the commissioner in accordance with this article and any rules and regulations adopted pursuant thereto.

35-10-115. Qualified supervisor and certified operator licenses - examination - application - fees.

- (1) Each applicant for a qualified supervisor or certified operator license shall:
 - (a) Pass a written examination in each class or subclass of pesticide application in which he wishes to be licensed;
 - (b) Possess the degree of experience and any other qualifications which may be required by the commissioner for licensure under this section; and
 - (c) If he wishes to be licensed to engage in aerial application of pesticides, possess a certificate issued by the federal aviation administration as specified in license qualifications adopted by the commissioner.
- (2) Each applicant for licensure under this section shall submit an application providing all information in the form and manner the commissioner shall designate, including, but not limited to, verification that such applicant has complied with subsection (1) of this section.
- (3) Each licensee shall be required to report to the commissioner, in the form and manner he shall designate, any change to the information provided in such licensee's application or in any such reports previously submitted, within fifteen days of such change.
- (4) Each applicant for a license issued under this section shall pay a license fee in an amount determined by the commissioner, after review by the advisory committee created in section 35-10-125.

35-10-116. Qualified supervisor and certified operator licenses - expiration -renewal of licenses.

(1) Licenses issued pursuant to section 35-10-115 shall be valid for three years and shall expire on the anniversary date of such license.

(2) A licensee licensed pursuant to section 35-10-115 may have the option to apply to renew a license without further examination if he has completed, within the previous three years, the competency requirements established by the commissioner.

(3) A licensee shall submit a renewal application in the form and manner designated by the commissioner on or before the termination date of such license and shall pay a renewal fee in an amount determined by the commissioner.

(4) If the application for renewal of any license issued pursuant to section 35-10-115 is not postmarked on or before the expiration date of the license, a penalty fee of ten percent of the renewal fee shall be assessed and added to the renewal fee. No license shall be renewed until the total renewal fee is paid.

(5) If the application and fee for renewal of any license issued pursuant to section 35-10-115 are not postmarked on or before the thirtieth day following the expiration date of the license, the license shall not be renewed and the licensee shall apply for a new license.

35-10-117. Unlawful acts.

(1) Unless otherwise authorized by law, it is unlawful and a violation of this article for any person:

(a) To perform any of the acts for which licensure as a commercial applicator, qualified supervisor, or certified operator is required without possessing a valid license to do so;

(b) To hold oneself out as being so qualified to perform any of the acts for which licensure as a commercial applicator, qualified supervisor, or certified operator is required without possessing a valid license to perform such acts;

(c) To solicit, advertise, or offer to perform any of the acts for which licensure as a commercial applicator, qualified supervisor, or certified operator is required without possessing a valid license to perform such acts; to act as an agent for any principal to solicit from any person the purchase of pesticide application or pest control services from the principal when the principal does not possess a valid license to perform the services being offered; or to enter into a contract to perform such services;

(d) To refuse to comply with a cease and desist order issued pursuant to section 35-10-120;

(e) To refuse or fail to comply with the provisions of this article;

(f) (I) To make false, misleading, deceptive, or fraudulent representations.

(II) No claims of absolute safety shall be made for any product regulated by this article.

(g) To impersonate any state, county, city and county, or municipal official or inspector;

(h) To refuse or fail to comply with any rules or regulations adopted by the commissioner pursuant to this article or to any lawful order issued by the commissioner.

(2) It is unlawful and a violation of this article for any person acting as a commercial, limited commercial, or public applicator, or as a qualified supervisor, or as a certified operator:

(a) To use, store, or dispose of pesticides, pesticide containers, rinsates, or other related materials, or to supervise or recommend such acts, in a manner inconsistent with labeling directions or requirements, unless otherwise provided for by law, or in an unsafe, negligent, or fraudulent manner;

(b) To use or recommend the use of any pesticide or device not registered with the department pursuant to article 9 of this title or to use or recommend the use of a pesticide or device in any manner inconsistent with the restrictions of the commissioner or the administrator;

(c) To use any device or pesticide or to direct or recommend such use without providing appropriate supervision, including, but not limited to, the application of any pesticide without providing the supervision of a qualified supervisor licensed in that class or subclass of pesticide application;

(d) To maintain or supervise the maintenance of any device or pesticide application equipment, including, but not limited to, loading pumps, hoses, or metering devices in an unsafe or negligent manner;

(e) To fail to provide the notification required pursuant to section 35-10-112 (1) (c);

(f) To make false or misleading representations or statements of fact in any application, record, or report required by this article or any rules or regulations adopted pursuant thereto;

(g) To fail to maintain or submit any records or reports required by this article or any rules or regulations adopted pursuant thereto.

(3) It is unlawful and a violation of this article for any commercial applicator, qualified supervisor, or certified operator:

(a) To permit the use of his license by any other person;

(b) To use or supervise or recommend the use of any device or pesticide which, including but not limited to generally accepted standards of practice, would be ineffective or inappropriate for the pest problem being treated;

(c) (I) To use any device or apply any pesticide or to recommend or supervise such acts in any manner which fails to meet generally accepted standards for such use or application except as provided by subparagraph (II) of this paragraph (c).

(II) If a commercial applicator receives instructions from a party contracting for such applicator's services and the commercial applicator knows or should know that using the device or applying the pesticide in the manner specified by the contracting party may not or does not meet generally accepted standards for such use or application, the commercial applicator must so inform the contracting party. If the contracting party, after being so advised, continues to require the commercial applicator to perform the application or use the device according to these instructions, the commercial applicator may follow these instructions for such application or use unless such application or use would violate any of the directions contained on the pesticide or the device or the labeling of either or would violate any provision of this article or article 9 of this title or any rule or regulation adopted pursuant to this article or article 9 of this title. If the commercial applicator complies with these requirements, the party

contracting for such application of any pesticide or use of any device shall have no cause of action for damages against the commercial applicator if the application or use causes death or injury to the contracting party or his property or is unsatisfactory in its result, unless the contracting party establishes, by a preponderance of the evidence, that such death, injury, or unsatisfactory result resulted from negligence or an intentional act not encompassed within or necessitated by the instructions provided by such contracting party.

(4) It is unlawful and a violation of this article for any commercial applicator:

(a) To operate any device or to apply any pesticide if the insurance required by section 35-10-106 (1) (a) is not in full force and effect at the time of such use or application, or if it does not have on file with the department, in the form and manner designated by the commissioner, verification that said insurance is in full force and effect;

(b) To fail to provide any customer with any information required to be so provided by this article or by any rules and regulations adopted pursuant thereto.

(5) It is unlawful and a violation of this article for any employee or official of the department to disclose or use for his own advantage any information derived from any applications, reports, or records, including medical records, submitted to the department pursuant to this article or to reveal such information to anyone except authorized persons, who may include officials or employees of the state, the federal government, the courts of this or other states, and physicians.

(6) The failure by any person to comply with the provisions of subsection (1) (a), (1) (b), (1) (c), (1) (f), or (4) (b) of this section is a deceptive trade practice and is subject to the protections of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.

35-10-118. Powers and duties of the commissioner.

(1) The commissioner is authorized to administer and enforce the provisions of this article and any rules and regulations adopted pursuant thereto.

(2) The commissioner is authorized to adopt all reasonable rules and regulations for the administration and enforcement of this article, including, but not limited to:

(a) The regulation of all aspects of pesticide application, including, but not limited to, the storage, use, application, and disposal of any pesticide or device by any person subject to this article;

(b) The establishment of qualifications for any applicant and standards of practice for any of the licenses authorized under this article, including the establishment of classifications and subclassifications for any license authorized under this article;

(c) The issuance and reinstatement of any license authorized under this article and the grounds for any disciplinary actions authorized under this article, including letters of admonition, other discipline through stipulation, or the restriction, probation, denial, suspension, or revocation of any license authorized under this article;

(d) The amount of the license fee for a commercial applicator business license, not to exceed two hundred fifty dollars through licensing year 1991 and three hundred fifty dollars thereafter, and such fee may be less than that in effect on May 31, 1990.

(3) The commissioner shall determine the content of each such examination required for the administration of this article and the amount of any examination and examination grading fee. Any examination grading fee established by the commissioner is limited to the actual administrative costs incurred in the grading of examinations. The commissioner shall establish a passing score for each examination which reflects a minimum level of competency in the class or subclass for which the applicant is being tested.

(4) The commissioner shall establish standards and procedures to issue a license to any person who possesses a valid license from another jurisdiction, where the qualifications for that license are substantially similar to those adopted for a comparable license authorized under this article.

(5) The commissioner shall establish any competency requirements and standards for any individuals licensed under section 35-10-115.

(6) The commissioner is authorized to conduct hearings required under sections 35-10-119 and 35-10-120 pursuant to article 4 of title 24, C.R.S., and to use administrative law judges to conduct such hearings when their use would result in a net saving of costs to the department.

(7) The commissioner is authorized to determine the amount of any licensing fee authorized under this article based on the actual cost of administering and enforcing the article and any rules and regulations adopted pursuant thereto.

(8) The commissioner is authorized to enter into cooperative agreements with any agency or political subdivision of this state or any other state, or with any agency of the United States government, for the purpose of carrying out the provisions of this article, receiving grants-in-aid, securing uniformity of rules, and entering into reciprocal licensing agreements.

(8.5) (a) The department may provide the following only to the extent of funding received pursuant to paragraph (b) of this subsection (8.5):

(I) Education programs for urban residents regarding the proper use of pesticides and regarding the dangers of misuse or overuse of pesticides; and

(II) Education programs for firefighters regarding precautions and procedures that are necessary when fighting fires that involve or are in the vicinity of pesticides or fertilizers.

(b) The commissioner is authorized to accept gifts, grants, and donations of any kind from any private or public source for the purposes of this subsection (8.5). The commissioner shall transmit all such gifts, grants, or donations to the state treasurer, who shall credit the same to the commercial pesticide applicator fund created in section 35-10-126.

(9) The commissioner is authorized to promulgate rules and regulations to comply with the "Federal Insecticide, Fungicide and Rodenticide Act", as amended; except that such rules and regulations shall not contravene any provision of this article, article 9 of this title, or any other provision of state law.

(10) The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

35-10-119. Inspections - investigations - access - subpoena.

(1) The commissioner shall provide for the inspection and analysis of pesticides being used and for the inspection of equipment, devices, or apparatus used for the application of pesticides, and he may require proper repairs or other changes before further use.

(2) The commissioner, upon his own motion or upon the complaint of any person, may make any and all investigations necessary to insure compliance with this article.

(3) Complaints of record made to the commissioner and the results of his investigations may, in the discretion of the commissioner, be closed to public inspection, except to the person in interest, as defined in section 24-72-202 (4), C.R.S., or as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee.

(4) At any reasonable time during regular business hours, the commissioner shall have free and unimpeded access upon consent or upon obtaining an administrative search warrant:

(a) To all buildings, yards, warehouses, and storage facilities in which any devices, pesticides, containers, rinsates, or other related materials are kept, used, stored, handled, processed, disposed of; or transported for the purpose of carrying out any provision of this article or any rule made pursuant to this article;

(b) To all records required to be kept and may make copies of such records for the purpose of carrying out any provision of this article or any rule made pursuant to this article.

(5) The commissioner shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses before him and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

35-10-120. Enforcement.

(1) The commissioner or his designee shall enforce the provisions of this article.

(2) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule made pursuant to this article has occurred and immediate enforcement is deemed necessary, the commissioner may issue a cease and desist order, which may require any person to cease violating any provision of this article or any rule made pursuant to this article. Such cease and desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions cease forthwith. At any time after service of the order to cease and desist, the person may request, at the person's discretion, a hearing to be held within a reasonable period of time to determine whether or not such

violation has occurred. Such hearing shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S., and shall be determined promptly.

(3) Whenever the commissioner possesses sufficient evidence satisfactory to him indicating that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule adopted under this article, the commissioner may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

35-10-121. Disciplinary actions - denial of license.

(1) The commissioner may issue letters of admonition, impose other discipline through stipulation, or restrict, impose probation on, deny, suspend, refuse to renew, or revoke any license authorized under this article if the applicant or licensee:

(a) Has refused or failed to comply with any provision of this article, any rule or regulation adopted under this article, or any lawful order of the commissioner;

(b) Has been convicted of a felony for an offense related to the conduct regulated by this article;

(c) Has had an equivalent license denied, revoked, or suspended by any authority;

(d) Has been adjudicated a violator or has committed a violation of the "Federal Insecticide, Fungicide and Rodenticide Act", as amended; except that a consent decree entered into with the EPA shall not be considered a violation of such act unless an order from the regional administrator of the EPA or the consent decree shall specifically state that a violation has occurred;

(e) Has refused to provide the commissioner with reasonable, complete, and accurate information regarding methods or materials used or work performed when requested by the commissioner; or

(f) Has falsified any information requested by the commissioner.

(2) In any proceeding held under this section, the commissioner may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a licensee or certified person from another jurisdiction if the violation which prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this section.

(2.5) Proceedings under this section shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S.; except that section 24-4-104 (3), C.R.S., shall not apply to such proceedings in cases of deliberate or willful violation; in cases of violation of labeling directions or requirements; or in cases in which the actions or omissions of the licensee in violations of this article have caused or threatened to cause substantial danger or harm to public health and safety, to property, or to the environment, as defined by the commissioner pursuant to section 35-10-118 (2). In such cases, no revocation, suspension, limitation, or modification of a license shall be lawful unless the commissioner has given the licensee notice in writing regarding any facts or conduct that

may warrant such action and has afforded the licensee opportunity to submit written data, views, and arguments with respect to such facts or conduct.

(3) No licensee whose license has been revoked may apply or reapply for any license under this article until two years from the date of such revocation.

(4) Any person aggrieved by a final disciplinary action taken by the commissioner may appeal such action to the Colorado court of appeals in accordance with section 24-4-106 (11), C.R.S.

35-10-122. Civil penalties.

(1) Any person who violates any provision of this article or any rule or regulation adopted pursuant to this article is subject to a civil penalty, as determined by the commissioner or a court of competent jurisdiction. The maximum penalty shall not exceed one thousand dollars per violation; except that such penalty may be doubled if it is determined, after notice and an opportunity for hearing, that the person has violated the provision, rule, or regulation for the second time.

(2) No civil penalty may be imposed by the commissioner unless the person charged is given notice and opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commissioner, the commissioner may bring suit to recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.

(4) Before imposing any civil penalty, the commissioner or a court of competent jurisdiction may consider the effect of such penalty on the ability of the person charged to stay in business.

35-10-123. Criminal penalties.

(1) No person may be charged under this section unless it is determined, after notice and an opportunity for hearing conducted pursuant to article 4 of title 24, C.R.S., that such person has twice committed the violation to be charged; except that this subsection (1) shall not apply to any person who violates any of the provisions of section 35-10-117 (1) (a), (1) (b), (1) (c), (1) (g), and (5).

(2) Any person who violates any of the provisions of section 35-10-117 (1) (a), (1) (b), (1) (c), (1) (e), (1) (g), (2) (a), (2) (b), (2) (c), (2) (d), (3) (a), or (4) (a) commits a class 1 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

(3) Any person who violates any of the provisions of section 35-10-117 (1) (f), (2) (f), (2) (g), (4) (b), and (5) commits a class 2 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

35-10-124. Information. The commissioner, in cooperation with other agencies of this state or the federal government, may publish information pertaining to the use and handling of pesticides and conduct workshops for the purpose of informing the pesticide applicators of new developments in the field of pesticides.

35-10-125. Advisory committee - sunset review.

- (1) The state agricultural commission created by section 35-1-105 shall appoint an advisory committee of eleven members to assist the commissioner in promulgating rules and regulations to carry out the provisions of this article.
- (2) The committee shall consist of the following members:
 - (a) A formulator, or his Colorado representative, actively engaged in the sale of pesticides in Colorado;
 - (b) A commercial applicator, licensed under this article, who is actively engaged in the commercial application of pesticides for the control of agricultural crop pests;
 - (c) A commercial applicator, licensed under this article, who is actively engaged in the commercial application of pesticides for the control of turf or ornamental pests;
 - (d) A commercial applicator, licensed under this article, who is actively engaged in the application of pesticides for the control of structural pests;
 - (e) A qualified supervisor, employed by a limited commercial applicator, who is actively engaged in the application of pesticides;
 - (f) Two representatives from public applicators registered under this article, each of whom shall be an elected official or a designee thereof;
 - (g) A representative from Colorado state university agricultural experiment station or extension service;
 - (h) A representative from the department of health; and
 - (i) Two representatives from the general public, one of whom is actively engaged in agricultural production.
- (3) All members of the advisory committee, with the exception of the formulator, shall be residents of this state.
- (4) The appointment of the formulator, the commercial applicator engaged in the control of agricultural crop pests, and one of the representatives from a public applicator shall expire on January 1, 1991; and the appointment of the commercial applicator engaged in the control of turf or ornamental pests, the representative from the general public who is actively engaged in agricultural production, the qualified supervisor employed by a limited commercial applicator, and the representative from the department of health shall expire on January 1, 1992. The initial appointment of all other members shall be for a term of three years. Thereafter, the appointment of each member to the committee shall be for a term of three years.
- (5) Members of the advisory committee shall receive no compensation but shall be reimbursed for actual and necessary traveling and subsistence expenses incurred in the performance of their official duties as members of such committee.
- (6) Repealed.

35-10-126. Commercial pesticide applicator fund - fees. All fees and civil fines collected pursuant to this article shall be transmitted to the state treasurer who shall credit the same to the commercial pesticide applicator fund, which fund is hereby created. All moneys credited to the fund and all interest earned on the investment of moneys in the fund shall be a part of this fund and shall not be transferred or credited to the general fund or to any other fund except as directed by the general assembly acting by bill. The general assembly may make annual appropriations from such fund to the department to carry out the purposes of this article.

35-10-127. Deadline for promulgation of rules and regulations for implementation of article, as amended. Any rules and regulations necessary for the implementation of this article, as amended at the second regular session of the fifty-seventh general assembly, shall be promulgated by the commissioner no later than December 31, 1991.

35-10-128. Repeal of article - termination of functions. Effective July 1, 2006, this article shall be repealed. The licensing function of the commissioner of agriculture shall also terminate on July 1, 2006. Prior to such repeal and termination, the licensing function shall be reviewed as provided for in section 24-34-104, C.R.S., and, as part of such review, the department of regulatory agencies shall report on the extent of local regulation of pesticides pursuant to section 31-15-707 (1) (b), CR5., or under the police power of any political subdivision of the state.