

## **Aerial Application of Pesticides.**

### **43-8-301. Definitions.**

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

- (1) "Adjuvant" means any substance that, when added to a pesticide, is intended to aid, modify or enhance its effectiveness by its properties of serving as a wetting agent, detergent, spreading agent, synergist, deposit builder, adhesive, surfactant, emulsifying agent, deflocculating agent, water modifier, or similar agent, with or without toxic properties of its own, and when sold in a package or container separate from that of the pesticide with which it is to be used.
- (2) "Aircraft" means any contrivance known or hereafter invented that is used or designed for navigation of or flight in the air over land or water and is designed or adaptable for use in applying pesticides in any form;
- (3) "Commercial aerial applicator" means any person who engages in the application of pesticides by aircraft;
- (4) "Commissioner" means the commissioner of agriculture, or the commissioner's authorized agent;
- (5) "Custom application of pesticides" means any application of pesticides for hire;
- (6) "Department" means the department of agriculture;
- (7) "Licensee" means any person duly licensed under this part;
- (8) "Person" means any individual, partnership, firm, corporation, company, trust, association, or other legal entity;
- (9) "Pesticide" means any substance or mixture of substances, or chemical intended for defoliating or desiccating plants, or for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other form of plant or animal life the commissioner shall declare to be a pest. This includes, but is not limited to, insecticide, fungicide, bactericide, herbicide, desiccant, defoliant, adjuvant or nematocide;
- (10) "Pilot" means any person flying an aircraft;
- (11) "Restricted use pesticide" means a pesticide that the commissioner has so designated by regulation under the Tennessee Insecticide, Fungicide and Rodenticide Act, compiled as parts 1 and 2 of this chapter; and

[Acts 1973, ch. 90, § 1; 1974, ch. 431, § 1; 1975, ch. 209, § 1; T.C.A., §§ 43-2901, 43-9-101; Acts 1996, ch. 805, §§ 5, 6.]

### **43-8-302. Powers and duties of commissioner.**

The commissioner has and shall exercise the following powers and duties:

- (1) Promulgate rules and regulations which the commissioner determines are necessary to implement and supplement this part and provide for its orderly administration;
- (2) Prescribe qualifications for applicants for licenses to engage in the custom application of pesticides and render such tests as are necessary to determine whether the applicant meets the qualifications;
- (3) Obtain the advice of members of the commercial aerial applicators industry before issuing rules, regulations, or qualifications for applicants for licenses;
- (4) Issue licenses to qualified applicants and collect the appropriate fees;
- (5) Hold hearings to determine whether or not any violation of this part or rules and regulations issued pursuant thereto has taken place, and transmit any information or material to the local district attorney general for prosecution if the commissioner determines that a violation has occurred;
- (6) Suspend or revoke any permit following a hearing as provided for in § [43-8-305](#);
- (7) Declare states of emergency and issue temporary permits as provided for in § [43-8-309](#);
- (8) Require that licensees maintain records and submit reports as necessary to show the nature and extent of their operation and any other information necessary to carry out the provisions and intent of this part;
- (9) Impose such limitations on the licenses granted to pilots, particularly with respect to compliance with the Tennessee Insecticide, Fungicide and Rodenticide Act, compiled as parts 1 and 2 of this chapter, as the commissioner may find necessary after determination of the applicant's qualifications;
- (10) Promulgate rules and regulations as required by the environmental protection agency; and
- (11) Inspect periodically the operation and conduct of licensees.  
[Acts 1973, ch. 90, § 2; 1975, ch. 209, § 2; 1977, ch. 210, § 1; T.C.A., §§ 43-2902, 43-9-102; Acts 1988, ch. 878, § 5.]

**43-8-303. [Repealed.]**

**43-8-304. Licensing requirements - Insurance.**

- (a) Each licensee-pilot must hold a valid federal aviation administration agronaut license and prove such licensee's proficiency to the commissioner. These requirements can be supplemented by rule or regulation issued by the commissioner.

(b) An acceptable liability insurance policy in the amount of one hundred thousand dollars (\$100,000) shall be in effect, and proof of such insurance shall accompany each application for license for an aircraft.

(c) The aircraft licenses shall be prominently displayed on each aircraft and each pilot must carry the license any time such pilot is working as a pilot engaged in custom application of pesticides.

(d) Any person applying for a license as a commercial aerial applicator shall have first obtained a certification in the category of pesticides that they intend to apply, as provided in the Tennessee Application of Pesticides Act of 1978, compiled in [title 62, chapter 21](#), or provide sufficient evidence of an equivalent certification from a state with which the state of Tennessee has a current and official reciprocal agreement.

(e) Any person applying for a license as a commercial aerial applicator shall take an examination administered by the department of agriculture as directed by the commissioner in order to determine if the applicant has the knowledge and technical qualifications necessary for the issuance of such license.

(f) Aerial applicators holding a current license under Tennessee law may renew such license without examination, but such renewed license shall be subject to whatever restrictions or limitations as are indicated by the license pursuant to the provisions of § [43-8-302\(9\)](#).

[Acts 1973, ch. 90, § 4; 1974, ch. 431, § 1; T.C.A., §§ 43-2904, 43-9-104; Acts 2003, ch. 120, § 1.]

#### **43-8-305. License revocation or suspension - Hearing - Review.**

(a) In the event the commissioner has reason to believe a licensee is guilty of violating any of the provisions of this part, including the rules and regulations promulgated hereunder, the commissioner shall conduct a hearing to determine if the license shall be suspended or revoked. A ten-day notice shall be given and the hearing conducted at Ellington Agricultural Center, Nashville.

(b) The commissioner has the power to subpoena any persons or records incident to the hearing, and a charge of contumacy may be filed for those who refuse to comply. The commissioner may administer oaths to those giving evidence. A court reporter shall be in attendance.

(c) Following the hearing, the commissioner may:

(1) Permanently revoke the license;

(2) Temporarily revoke the license; or

(3) Suspend the license for a definite period of time.

(d) The action of the commissioner may be reviewed by common law writ of certiorari to the chancery court of Davidson County and the petition shall be filed within ten (10) days from the date of the commissioner's order. Upon the grant of the writ of certiorari, the commissioner shall certify to the court a complete transcript of the proceedings instituted before the commissioner. This certified transcript shall constitute the whole record, and no additional proof or evidence shall be considered by the chancery court of Davidson County. The decision of the commissioner shall remain final until modified by the commissioner or by the courts.

[Acts 1973, ch. 90, § 5; T.C.A., §§ 43-2905, 43-9-105.]

#### **43-8-306. Violations - Penalties.**

Operating as a commercial aerial applicator without a license, using or applying a pesticide in a manner that is not consistent with the label or label restrictions, or otherwise violating this part, including any rules or regulations, is a Class A misdemeanor.

[Acts 1973, ch. 90, § 6; 1977, ch. 210, § 3; T.C.A., §§ 43-2906, 43-9-106; Acts 1989, ch. 591, § 113; 2003, ch. 120, § 3.]

#### **43-8-307. Enjoining violations.**

The commissioner, on determining that any person, firm, partnership, or corporation may have violated any provision of this part, may petition for injunctive relief from further violation. Such petition shall be addressed to the chancery court in the county in which the offense occurred or in which the offender's principal place of business is located, or where the offender is doing business or resides. The chancellor, on determining that probable cause of a violation of this part exists, shall issue appropriate injunctive relief.

[Acts 1973, ch. 90, § 7; T.C.A., §§ 43-2907, 43-9-107.]

#### **43-8-308. Exemption from law.**

(a) This part does not apply to local, state, or federal government aerial operations nor where legitimate agricultural experiments are being conducted as recognized by the commissioner, nor shall this part apply where a landowner wishes to make an application of pesticides with the landowner's personally owned aircraft on the landowner's personally owned land.

(b) The exemptions enumerated in this section do not apply to any user of pesticides that have been designated for restricted use.

[Acts 1973, ch. 90, § 8; 1975, ch. 209, § 3; T.C.A., §§ 43-2908, 43-9-108.]

#### **43-8-309. State of emergency - Temporary permits - Fee - Bond of nonresidents.**

(a) The commissioner is hereby authorized to declare a state of emergency if there is an epidemic or plague of such proportions to endanger public health and safety, or to threaten loss or severe damage to a crop. Under such conditions, the commissioner is authorized or empowered to permit additional commercial aerial applicators to operate within the state and shall issue temporary permits for the same. A fee of one hundred dollars (\$100) must accompany each application for such permit.

(b) All nonresident licensees or nonresident persons issued temporary permits shall file with the department an acceptable liability insurance policy in the amount of one hundred thousand dollars (\$100,000) guaranteeing an answer for damages resulting from custom application of pesticides. In addition, every nonresident licensee is required to appoint a resident service agent.

[Acts 1973, ch. 90, § 9; 1974, ch. 431, § 1; 1975, ch. 209, § 4; 1977, ch. 210, § 4; T.C.A., §§ 43-2909, 43-9-109.]

#### **43-8-310. Denial of licensing - Contesting denial.**

The commissioner of agriculture may deny licensing to applicants not meeting the requirements for certification and/or licensing or for violations of the rules or statutes concerning the use, purchase or sale of pesticides; provided, however, that any person denied such certification or licensure may contest such decision by requesting a hearing under the Tennessee Administrative Procedures Act, compiled in [title 4, chapter 5](#).

[Acts 2003, ch. 120, § 2.]

#### **43-8-311. Photographic identification.**

Aerial applicators shall have in their possession a valid aerial applicators license, containing photographic identification, issued by the Tennessee department of agriculture, at all times when they are engaged in the aerial application of pesticides in the state of Tennessee.

[Acts 2003, ch. 120, § 2.]

#### **43-8-312. Notification of application.**

Aerial applicators applying pesticides in the state of Tennessee shall notify the sheriff's office in the county in which an application is to be made. Such notification shall be made prior to the pesticide application and no later than the day of the application. The aerial applicator shall report the name of the landowner and the location of each intended pesticide application as well as the name or names of the pesticide or pesticides to be sprayed.

[Acts 2003, ch. 120, § 2.]

#### **43-8-313. Securing aircraft.**

All aircraft licensed under this chapter shall be secured or otherwise rendered inoperable by means of a prop chain lock, gust lock, throttle restriction, or other measures acceptable to the commissioner of agriculture except when the aircraft is in use or under the direct control of an aerial applicator licensed under this chapter or under the direct responsibility of an airport operator.

[Acts 2003, ch. 120, § 2.]

**43-8-314. Log Records - Product Label Directions.**

(a) Aerial applicators shall maintain a log record for a period of thirty-six (36) months on each application. Such record shall be made available on demand to the commissioner for review and copies shall be provided to representatives of the department of agriculture upon request. Aerial applicators located outside the boundaries of the state of Tennessee, shall submit a certified copy of any log record for any or all applications as required by the commissioner within forty-eight (48) hours at a time and location designated by the commissioner.

(b) The log record shall clearly set out the following information relative to each pesticide application:

- (1) The pesticide used and its EPA registration number;
- (2) The crop or plant to which the pesticide was applied;
- (3) The dosage rate of the application;
- (4) The approximate acreage to which the pesticide was applied;
- (5) The location, description, and GPS coordinates of the area to which the pesticide is applied;
- (6) The landowner, producer, or other person employing such aerial applicator's services;
- (7) The date of pesticide application;
- (8) The name and Tennessee license number of the aerial applicator; and
- (9) The decal number of the aircraft used for the application.

(c) Aerial applicators shall apply all pesticides in a manner that is consistent with the label directions for that product. Aerial applicators must submit evidence to prove that label directions were followed and all restrictions were fully met when requested to do so by the commissioner.

[Acts 2003, ch. 120, § 2.]