

# ARKANSAS REGISTER

## Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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**For Office**

**Use Only:**

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Department of Agriculture

Department Plant Board

Contact Wade Hodge E-mail wade.hodge@agriculture.arkansas.gov Phone 501-219-6361

Statutory Authority for Promulgating Rules 2-16-207

**Rule Title:** Pesticide Use and Application - Aerial Application Rules

**Intended Effective Date**

(Check One)

☐ Emergency (ACA 25-15-204)

☐ 10 Days After Filing (ACA 25-15-204)

☒ Other 01/04/0994  
(Must be more than 10 days after filing date.)

Legal Notice Published ..... \_\_\_\_\_

Final Date for Public Comment ..... \_\_\_\_\_

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Adopted by State Agency ..... 09/17/1993

**Date**

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Wade Hodge

wade.hodge@agriculture.arkansas.gov

12/23/2019

Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)



Signature

501-291-6361

Phone Number

wade.hodge@agriculture.arkansas.gov

E-mail Address

Managing Attorney

Title

12/23/1019

Date

# Rules Under Act 389 of 1975 as Amended

## Rule 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

## Rule No. 2. Commercial Applicator

### I. 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 (I)(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 rules, 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 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 legal means available to him/her to verify that an inversion does not exist.
- (D) All spray nozzle discharges must be pointed toward the rear of the aircraft and a minimum of ten (10) inches below the trailing edge of the wing.



(F) Drift reduction nozzles that produce medium or greater spray classifications must be used.

(G) Where the product label is more restrictive than these rules, 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 aircraft 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.

### **Rule 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.

## **Rule 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:

- (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.

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 licenses shall be as specified in the Arkansas Pesticide Use and Application Act of 1975, as amended.

V. The license will permit the certified applicator to purchase and use restricted use pesticides in any category under the amended FIFRA or state rules on pesticide classification.

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 40 CFR, 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 Rule 2, Paragraph 1 of these rules

**Rule No. 5. Pilot License**

Fee - \$35.00

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

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

**Rule No.7. Container and Containment Rules**

In accordance with ACA 20-20-216, the Arkansas State Plant Board hereby adopts 40 CFR Part 165, Subparts A through E (see Attachment I).

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