

# Rules Under Act 389 of 1975 as Amended

## Rule No. 1. Categories of Applicators

The Arkansas Department of Agriculture (Department) adopts by federal reference (40 CFR §171.103(c)) the core standards of competency for all of the below noted categories of certified commercial and noncommercial applicators. The following categories have been established for licensing and applicator certification purposes:

- I. Commercial Applicator Categories
  - A. Agricultural Pest Control
    - (1). Crop
      - 1. (2). Livestock
  - 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
  - I. Aerial Pest Control
- II. Noncommercial 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 State 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 State Plant Board. Documentation of such verification must be recorded on a form provided by the Department. All verification documentation must be provided to the Department 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 at least 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



training and experience in the application of herbicides to field crops, and whose curriculum vitae is acceptable to the State Plant Board. Upon the effective date of these rules, said documentation must be provided to the Department by June 2, 2002. All subsequent verification documentation must be provided to the Department 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 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 Department or a licensed Commercial Applicator Technician licensed by the Department.
- (A) A Commercial Applicator Technician works under the supervision of a certified, commercial applicator.
  - (B) A Commercial Applicator Technician must be licensed by the Department. Said license shall expire on December 31<sup>st</sup> of each year.
  - (C) In order to obtain a license from the Department, all Commercial Applicator Technicians must complete the Commercial Applicator Technician training program, which consists of the following criteria.
    - 1. Commercial Applicator Technician training must be presented to Commercial Applicator Technicians either orally from written materials or in audio visual format. The information must be presented in a manner that the Commercial Applicator Technician understands, such as through a translator. The person conducting the training will be present during the entire training program and must respond to the Commercial Applicator Technicians' questions.
    - 2. The person who conducts the training is required to meet one of the following criteria:
      - a. Currently holds a license issued by the Department as an applicator of restricted use pesticides
      - b. Is currently designated as a trainer of certified applicators or pesticide handlers by the Department
      - c. Has completed and EPA-approved pesticide safety train-the-trainer program for trainers of handlers under 40 CFR § 170
    - 3. The Commercial Applicator Technician training materials includes the following information:
      - a. Potential hazards from toxicity and exposure that pesticides present to noncertified applicators and their families, including acute and chronic effects, delayed effects, and sensitization.
      - b. Routes through which pesticides can enter the body.
      - c. Signs and symptoms of common types of pesticide poisoning.

- d. Emergency first aid for pesticide injuries and poisonings.
- e. Routine and emergency decontamination procedures, including emergency eye flushing techniques. Noncertified applicators must be instructed that if pesticides are spilled or sprayed on the body, to immediately wash or to rinse off in the nearest clean water. Noncertified applicators must also be instructed to wash or shower with soap and water, shampoo, hair, and change into clean clothes as soon as possible.
- f. How and when to obtain emergency medical care.
- g. After working with pesticides, wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.
- h. Wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible after working with pesticides.
- i. Potential hazards from pesticide residues on clothing.
- j. Wash work clothes before wearing them again and wash them separately from other clothes.
- k. Do not take pesticides or pesticide containers used at work to your home.
- l. Potential hazards to children and pregnant women from pesticide exposure.
- m. After working with pesticides, remove work boots or shoes before entering your home and remove work clothes and wash or shower before physical contact with children or family members.
- n. How to report suspected pesticide use violations to the appropriate State or Tribal agency responsible for pesticide enforcement.
- o. Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide, including the location and meaning of the restricted use product statement, how to identify when the labeling requires the certified applicator to be physically present during the use of the pesticide, and information on personal protective equipment.
- p. Need for, and appropriate use and removal of, personal protective equipment.
- q. How to recognize, prevent, and provide first aid treatment for heat-related illness.
- r. Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.
- s. Environmental concerns such as drift, runoff, and wildlife hazards.
- t. Restricted use pesticides may be used only by a certified applicator or by a noncertified applicator working under the direct supervision of a certified applicator.
- u. The certified applicator's responsibility to provide to each noncertified applicator instructions specific to the site and pesticide used. These instructions must include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (e.g., surface and ground water, endangered species, local

population, and risks) and the conditions of application (e.g., equipment, method of application, formulation, and risks) might increase or decrease the risk of adverse effects. The certified applicator must provide these instructions in a manner the noncertified applicator can understand.

- v. The certified applicator's responsibility to ensure that each noncertified applicator has access to the applicable product labeling at all times during its use.
  - w. The certified applicator's responsibility to ensure that where the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, each noncertified applicator has clean, labeling-required personal protective equipment in proper operating condition and that the personal protective equipment is worn and used correctly for its intended purpose.
  - x. The certified applicator's responsibility to ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the noncertified applicator, other persons, or the environment.
  - y. The certified applicator's responsibility to ensure that a means to immediately communicate with the certified applicator is available to each noncertified applicator using restricted use pesticides under his or her direct supervision.
- (D) A Commercial Applicator Technician must be at least eighteen (18) years old as required by 40 CFR § 171.303(a)(2)(iii) and Ark. Code Ann. § 20-20-207(c).

IV. Licensed commercial applicators supervising any Commercial Applicator Technician must have access to records documenting the below required information at the commercial applicator's principal place of business for two years from the date the Commercial Applicator Technician applied the restricted use pesticide. Prior to allowing a Commercial Applicator Technician to use restricted use pesticides under his or her supervision, a licensed commercial applicator will create or verify the existence of a record containing the following information:

- (A) The Commercial Applicator Technician's printed name and signature
- (B) The date the Commercial Applicator Technician training requirements describe in Section IV were met
- (C) The name of the person who provided the Commercial Applicator Technician training
- (D) The title or description of the training provided

V. License application review fees shall be as follows:

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| (A) License to apply seed, fertilizer, and pesticides      | \$100 |
| 1. Plus for each aircraft or article of ground equipment   | \$20  |
| (B) Individual Commercial Applicator license, per category | \$35  |
| (C) RUP Seed treatment license                             | \$35  |
| (D) Commercial Applicator Technician license               | \$25  |

A fee of \$5 from each license issued to a Commercial Applicator Technician by the Department shall be transferred to the University of Arkansas Cooperative Extension Service for the purpose of

developing and providing Commercial Applicator Technician training subject to approval by the Department.

- VI. 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.
- VII. 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.
- VIII. A Commercial Applicator must be at least eighteen (18) years old as required by 40 CFR § 171.103(a)(1).

**Rule No. 3. Noncommercial Applicator's License.**

- I. The review fee for a Non-Commercial Applicator's license shall be \$35 per category. At the discretion of the Plant Industries Division Director this fee may be waived for Cooperative Extension employees actively involved in supporting the Department's regulatory programs.
- II. A Noncommercial applicator must be at least eighteen (18) years old in order to apply a restricted use pesticide pursuant to 40 CFR 171.303(a)(2)(iii) and Ark. Code Ann. § 20-20-207(c).

**Rule No. 4. Commercial and Noncommercial Applicator Record Keeping**

- I. Commercial and noncommercial applicator licensees shall **keep and maintain for a period of at least 2 years** routine operational records containing information on the kinds, amounts, uses, dates, and places of application of pesticides with the following:
  - (A) The name and address of the person for whom the restricted use pesticide was applied
  - (B) The location of the restricted use pesticide application.
  - (C) The size of the area treated.
  - (D) The crop, commodity, stored product, or site to which the restricted use pesticide was applied.
  - (E) The time and date of the restricted use pesticide application.
  - (F) The brand or product name of the restricted use pesticide applied.
  - (G) The EPA registration number of the restricted used pesticide applied.
  - (H) The total amount of the restricted use pesticide applied per location per application.
  - (I) The name and certification number of the certified applicator that made or supervised the application, and, if applicable, the name of any noncertified applicator(s) that made the application under the direct supervision of the certified applicator.

**Rule No. . 5 Private Applicator License.**

I. The Arkansas Department of Agriculture adopts by federal reference (40 CFR §171.105(c)-(e)) the core standards of competency for all of the below noted private applicator categories. The following categories have been established for private applicator licensing and certification purposes.

- (A) General Private Applicator
- (B) Fumigation
- (C) Aerial Pest Control

**II. Initial Certification**

All first time applicants for a Private Applicator’s license must have been “certified” within the 12 months prior to license application. 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 a licensure in excess of five years. 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 Department. Applicant must achieve a minimum score of 70% of total possible points.

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

IV. 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.

V. A fee of \$2.00 from each license issued to a private applicator by the Department 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 t § 171.5.

VI. The transfer of such funds shall be made quarterly by a cooperative agreement contract between the Department and the University of Arkansas Cooperative Extension Service.

VII. Private applicators using aircraft to apply herbicides must comply with the criteria set out for commercial applicators in Rule 2, Paragraph I of these rules.

VIII. A Private Applicator must be at least eighteen (18) years old as required by 40 CFR § 171.105(g).

I. Rule No. 6 Commercial and Private Recertification/ Maintenance of continued competency

(A) Certification expiration. In order for a certified applicator’s certification to continue without interruption, the certified applicator must be recertified under this section before the expiration of their current certification

- 1. Each commercial applicator certification shall expire three years after issuance, unless the applicator is recertified in accordance with this section.
- 2. Each private applicator certification shall expire five years after issuance, or annually for up to five consecutive years after issuance, unless the applicator is recertified in accordance with this section.

II. Process for recertification

(A) **Written examination.** Commercial and private applicators may recertify through a written examination given by the Department. Test questions are obtained from the National Association of State Departments of Agriculture Research Foundation's test bank by the University of Arkansas Cooperative Extension Service. These questions are provided to Pesticide Section staff for final approval to ensure the applicator demonstrates the level of competency required by 40 CFR § 171.103 for commercial or 40 CFR § 171.105 for private applicators. The examinations shall conform to the applicable standards for examinations set forth in 40 CFR § 171.103(a)(2) or 40 CFR § 171.105(h). An applicant must receive a 70% or higher grade for recertification. Separate exams are provided to commercial and private applicators.

(B) **Continuing education programs.** Commercial and private applicators may be found eligible for recertification upon attending a continuing education program or training approved by the University of Arkansas Cooperative Extension Service and Arkansas Department of Agriculture.

1. **Quantity, content, and quality.** In order for a continuing education program to count towards recertification, the content must be sufficient to ensure the applicator continues to demonstrate the level of competency required by 40 CFR § 171.103 for commercial applicators or 40 CFR § 171.105 for private applicators.

- a. An applicant may attend the annual Pesticide Applicator Training offered by the County Cooperative Extension Office for recertification.
- b. An applicant may attend a pesticide training provided by a third party so long as the provisions of (2)(b) below are met. The content of this training must include core and/or category specific competency standards as described in 40 CFR § 171.103 or 40 CFR § 171.105 for commercial or private applicators, respectively.
- c. To count towards recertification, programs and agendas must include all of the following:
  - i. Safety – labeling, protective gear, pesticide handling, first aid, toxicity, symptoms of poisoning, etc.
  - ii. Integrated Pest Management (IPM) – pest identification, biology, scouting/inspecting, alternative methods of control (non- pesticide, baits, etc.)
  - iii. Application equipment and/or methods of application – types of equipment, different methods of application, calibration, and equipment precautions, etc.
  - iv. Environmental concerns – waste/container disposal, clean-up, ground/surface water protection, drift (if applicable), and wildlife protection (if applicable)
  - v. Laws and regulations – updates on pertinent laws and regulations, certification/recertification requirements, etc., as appropriate

2. **Approval by the certifying authority.** The Arkansas Department of Agriculture works in coordination with the University of Arkansas Cooperative Extension Service Agriculture Program Specialist to develop training and testing for recertification.

- a. Continuing education programs conducted by the University of Arkansas Extension Service are coordinated with Arkansas Department of Agriculture to meet the



requirements of 40 CFR § 171.103 for commercial and 40 CFR § 171.105 for private applicator. ADA staff monitor continuing education classes to ensure that required content is covered.

- b. For an outside training program to be approved, the agenda or syllabus must be submitted to the Arkansas Department of Agriculture Pesticides staff and the University of Arkansas Cooperative Extension Service Agriculture Program Specialist for review.
3. **Verification of applicator course completion.** In order to qualify for recertification, an attendance list or certification form with verifying information and/or signature, is required to be submitted to the Arkansas Department of Agriculture. For online recertifications, a completion certificate is required to be submitted to the Arkansas Department of Agriculture.

#### **Rule No. 7. Aerial Pest Control License**

Fee - \$35.00

#### **Rule No. 8. Pesticide Dealer's License**

- I. Fee - \$65.00 for dealers handling restricted use pesticides and/or Arkansas classified restricted use pesticides (Reference: ARKANSAS RULES ON PESTICIDE CLASSIFICATION as adopted under Acts 389 and 410 of 1975). Note: If license-holding dealers have branches which sell or distribute restricted use and/or Arkansas classified restricted use pesticides, each branch **must** have a dealer's license
- II. Each licensed dealer outlet shall maintain a record of restricted-use pesticides distributed. **Records must be maintained for the period of at least two years.** Records of each such transaction must include the following information:
  - (A) Name and address of the residence or principal place of business of each certified applicator to whom the restricted use pesticide was distributed or sold, or if applicable, the name and address of the residence or principal place of business of each noncertified person to whom the restricted use pesticide was distributed or sold for application by a certified applicator.
  - (B) The certification number on the certification document presented to the seller evidencing the valid certification of the certified applicator authorized to purchase the restricted use pesticide, the State, Tribe or Federal agency that issued the certification document, the expiration date of the certified applicator's certification, and the category(ies) in which the applicator is certified relevant to the pesticide(s) sold.
  - (C) The product name and EPA registration number of the restricted use pesticide(s) distributed or sold in the transaction, including any applicable emergency exemption or State special local need registration number.
  - (D) The quantity of the restricted use pesticide(s) distributed or sold in the transaction.
  - (E) The date of the transaction.

#### **Rule No. 9. Container and Containment Rules**

In accordance with ACA § 20-20-216, the Arkansas State Plant Board hereby adopts 40 CFR § 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.

### 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.
<u>a.</u> Water diluted spray of Quinclorac herbicide tank-mixed with emulsifiable concentrate (EC) formulation herbicides such as: ·Stam M-4 EC    ·Arrosolo 3+3 EC ·Propanil EC    ·Ordram 8E ·Abolish 8E    ·Bolero 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
<u>b.</u> Water diluted spray of Quinclorac herbicide applied in water alone or tank-mixed with emulsifiable concentrate formulation free herbicides such as: ·Stam 80EDF                    ·Basagran ·Terra Propanil 80DF        ·Blazer ·Wham EZ, Super Wham    ·Storm ·Pentagon 60 WDG            ·Londax	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

1. 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 Department with atomization study data from a research entity acceptable to the State Plant Board that shows that the product does not produce more “fines” (percent of total spray volume in droplets <math><105\mu\text{m}</math>) 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.