



MEMORANDUM

TO: COMMERCIAL PESTICIDE APPLICATOR
FROM: SCOTT OLDHAM, UDAF PESTICIDE PROGRAM MANAGER
SUBJECT: INFORMATION REGARDING YOUR COMMERCIAL PESTICIDE LICENSE

Congratulations! You passed your tests and are now licensed as a commercial pesticide applicator with the State of Utah/Utah Department of Agriculture and Food (UDAF). With your new license come new responsibilities. It is hoped that this memorandum will answer questions you may have and explain your responsibilities as a commercial applicator.

1. RECORD KEEPING –As a commercial applicator, you are required to keep records of your work. The records consist of the following for each application of any pesticide. These records must be prepared within 24 hours after the pesticide application is made.

- A. Name and address of owner of property treated.
- B. Location of treatment site, if different from (A).
- C. The day, months and year when the pesticide was applied.
- D. Band name of pesticide, EPA registration number, rate of formulation applied per unit area, and total amount of diluted pesticide used.
- E. Purpose of application (target site and pest treated).
- F. The name and license number of the certified applicator. The business name, address and license number of the certified applicator who applied the pesticide.

The records must be kept for two years from date of application and be available to UDAF for inspection at reasonable times. A copy of these records must be provided to UDAF upon request. Copies of these records may be taken by UDAF.

2. LICENSE RENEWAL –Your certification is valid during a three-year period (January 1 through December 31). You will be notified by email/mail before your three year certification period will expire. If you do not receive your renewal notice by December 15, please contact UDAF or your local Compliance Specialist. Renewal notices and payments received by UDAF after December 31 are subject to late fees until February 28th. Anything submitted after February 28th will not be accepted and the general and category tests will have to be taken in order to recertify.

3. ADDRESSES – License will be sent to the licensed pesticide applicator business that you work for. It is your responsibility to let us know of any address change you make. If we can't reach you by email/mail, your license will be dropped and you will need to retest.

4. RECERIFICATION – You will be required to recertify within three years of your last testing. Pesticide applicators have three options available for recertification. You may choose the method that is best for you.



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HOW A LICENSED UTAH PESTICIDE APPLICATOR CAN RECERTIFY

Commercial Applicators are required to pay \$65.00 for a 3 year license. **Non-Commercial and Private Applicators** are required to pay \$20 for a 3 year license. All recertification fees must be accompanied by an application to recertify. A check should be made out to the **Utah Department of Agriculture and Food (UDAF)**. Master Card, Visa, American Express or Discover Card payments will be accepted online ag.utah.gov/pesticides. A \$15.00 fee will be charged for any replacement license (including re-prints for a change of address or similar request).

All pesticide applicators have three (3) options available for recertification

I. *Complete the original certification process by taking the general and category test(s) for the appropriate pesticide license.*

II. *Attend the annual UDAF-USU recertification seminar on the final year of certification. At the end of the course, if you do not have enough credits for the Continuing Education Unit (CEU) Program, you may test in your category (or categories) and recertify. The General/Core exam will be waived. A letter will be sent listing dates and locations where annual USU-UDAF recertification seminars are to be held. Only 1 of the annual USU-UDAF seminar per year can be counted towards your CEU requirements.*

III. *Participate in the Continuing Education Units (CEU) Program.*

From November 1st to December 31st (excepting weekends and holidays) applicators may recertify with the required number of CEU obtained during the three (3) year period of valid certification. CEU obtained before November 1st and turned in after December 31st will be accepted with a late fee of \$25 until March 1st. If you do not recertify by March 1st, your license will expire and the certification process must be started over by testing. You may use CEU from one annual UDAF-USU recertification workshop a year towards the CEU Program. All applicators recertifying by CEU are to bring a completed application and their records of units earned to a UDAF recertification workshop or to the Compliance Specialist's office for verification of the CEU and processing.

Commercial/Non-Commercial and Private Rectification

A. *Commercial/Non-Commercial*

Applicators will need to obtain a total of 24 CEU credits prior to their license expiration date in order to recertify without examination. Each unit represents one (1) hour of instruction and must meet the minimum categories of credit listed below:

1. LAW: A ***minimum*** two (2) units in the subject area of applicable state, federal and local laws and regulations.
2. SAFETY: A ***minimum*** six (6) units in the subject area of pesticide safety that includes the pesticide applicator, his family, the public and the environment.
3. USE: A ***minimum*** ten (10) units in pesticide use which includes the calibration of equipment, pesticide storage, pesticide labels, and pest identification.
4. Six (6) Units from any of 1, 2, or 3 (above).

B. Private

Applicators must obtain a total of 6 CEU credits prior to their license expiration date in order to recertify without taking an examination. Each unit represents (1) one hour of instruction and meet the minimum categories of credit listed below:

1. LAW: A ***minimum*** of One (1) unit in the subject area of applicator state, federal and local laws and regulations.
2. SAFETY: A ***minimum*** of One (1) unit in the subject area of pesticide safety which includes pesticide applicator, his family, the public and the environment.
3. USE: A ***minimum*** of One (1) unit in pesticide use which includes: calibration of equipment, pesticide storage, pesticide product label, and pest identification.
4. Three (3) Units from any of 1, 2, or 3 (above).

IV. Valid Course Procedures for courses not sponsored by Utah Dept. of Agriculture & Food (UDAF)

A. The course must be approved in advance by UDAF. Out-of-state courses must be approved by the state in which they are held, or in advance by UDAF. UDAF may, or may not, approve out of state and online credit at the discretion of the CEU coordinator, Program Manager, or designee. Post approval will be rare and only with extenuating circumstances.

B. The instructor or sponsor will be responsible to get all courses approved by UDAF, unless UDAF has indicated the instructor, or sponsor, can proceed to issue a certificate on their own for future meetings.

C. Sponsors should send an agenda to UDAF so the courses can be listed on our website. A course list can be obtained at the UDAF web site at:

<http://ag.utah.gov/divisions/plant/pesticide/documents/CEUList.pdf>

D. Participants will be required to sign a roll at the beginning and end of course that the sponsor will maintain. The sponsor may issue replacement CEU certificate after verifying attendance on these rolls. The sponsor may supply a copy of the rolls to UDAF as a back-up copy. In some situations UDAF will require a copy.

E. Applicators shall keep each certificate of all courses attended. ***This certificate must be maintained by the applicator*** and turned in at the time of recertification to receive credit for attendance at the CEU courses.

F. A file should be maintained by the applicator, or his company designating the subject matter of each course attended an agenda of the meeting and the name of the sponsor in the event they need to have the CEU record sheet replaced, or UDAF requires more information on the CEU for recertification. Applicators are encouraged to discuss with UDAF, on an individual basis, any CEU that they receive from another entity (such as an association) that they obtain for certification by that entity - where it can be clearly demonstrated that the material, or course, etc... is relevant to recertification as a pesticide applicator.

G. CEU will not be awarded for:

1. Programs or talks on business management
2. Motivation speeches
3. Personnel management
4. Non-applicable equipment demonstrations

H. UDAF will accept recertification CEU from any state in which an applicator has a valid license as well as with the United States Department of Defense (DOD) and the Bureau of Land Management (BLM).

I. CEU for safety will be awarded based on written evidence that a CPR, First Aid, First Responder, EMT, or similar course was attended and certification awarded. Evidence should also show how many hours of training the course provided and who administered the course. In addition to a certificate, an agenda may be needed to show the number of hours the course was held.

J. No more than 6 CEU credits may be obtained from any website, or online source including the UDAF website, except webcasts, with interaction to and from the instructor that are approved in advance by UDAF. Approval of online CEU are subject to demonstration that the material is suitable for CEU credit as reviewed by the CEU coordinator, the Program Manager, or a designee. Review is not usually necessary if accepted by a program from another state, but remains subject to the 6 hour (6 CEU) limit.

K. On a limited basis, at the sole discretion of the Program Manager, CEU Coordinator, or designee, safety meetings, venter meetings with applicators and similar meetings ***MAY*** be approved for CEU.

Revised 10-25-12 DSM



PESTICIDES

Understanding the Investigation and Enforcement Process

The Utah Department of Agriculture and Food (UDAF), Division of Plant Industry, is responsible for the investigation of the misuse of pesticides and the enforcement of state laws regarding pesticide use. Pesticides include but are not limited to chemicals used to safeguard crops as well as those used in and around homes and businesses to kill insects, plant and animal diseases, weeds and other pests.

Who regulates the use of Pesticides in Utah?

UDAF, Division of Plant Industry, regulates the registration, sale, distribution, use, storage and disposal of pesticides under the authority of state laws and rules governing pesticides. The Environmental Protection Agency (EPA) has also delegated to UDAF primacy in areas relating to pesticide use and distribution.

What is the role of the UDAF Division of Plant Industry and Conservation?

The role of the UDAF is to ensure the safe and proper use of pesticides through education and regulation for protection of the people, animals, wildlife, and environment of the State of Utah. Enforcement is one of several tools used to promote compliance with laws designed to fulfill this role.

What is the role of the UDAF investigator?

The investigator's job is to maintain an unbiased approach in collecting the facts regarding possible misuse of a pesticide. The investigator will document what happened by conducting interviews; collecting statements, application records, and pesticide labels; taking photographs; and making onsite assessments. The investigator may also collect physical evidence such as soil, vegetation, clothing, swabs, water and other samples. In fairness to everyone involved, it is important for individuals to give the investigator complete and accurate accounts of the events that occurred. UDAF personnel will collect all samples and evidence for use in an investigation to maintain a proper chain of custody and ensure that the information obtained can be used, if needed, in a formal hearing.

What gives an UDAF investigator the authority to inspect my property and equipment?

The Utah Pesticide Control Act, contained in Section 4-14 of the UTAH CODE, provides that the Commissioner's designated agent (UDAF investigator) may enter any public or private premise at reasonable times for the purpose of:

- **Observing the use and application of pesticides;**
- **Inspecting records that are required to be maintained by the law;**
- **Inspecting equipment, storage facilities, and disposal areas;**
- **Investigating complaints of injury regarding human health, plant injury or environmental damage;**
- **Collecting samples of land or pesticides.**

The Utah Pesticide Control Act also allows UDAF to obtain a search warrant in situations where access is denied. Denial of access includes any action that interferes with the normal procedures of a UDAF inspector conducting a routine inspection or investigation.

Will I be kept informed of the progress of the investigation?

As the lead person for the investigation, the UDAF investigator can keep you informed of the progress of the investigation. Certain information may not be released if it is determined



that it could interfere with the progress of the investigation or potential enforcement action. Results of the laboratory analysis performed on samples from your property can be shared with you while the investigation is underway. When a decision is made you will be notified whether or not a regulatory action will be taken. You can also contact the nearest field office or the Salt Lake City office using the numbers listed in this brochure if you want to be kept informed of the progress of the investigation. You may also request a copy of the report, once the investigation has been completed by sending a written request for the investigation report to the Salt Lake City Office.

What happens when the investigator completes the investigation?

After the investigation is completed, the investigator will submit a report to the Salt Lake City office. The report will be reviewed to determine if there were any violations of the Utah Pesticides Law or associated rules and if there is sufficient evidence to support the alleged violation(s). Once it has been determined that a violation has occurred, a decision

will be made as to what regulatory action will be taken. The UDAF may take any one of the following actions depending on the severity of the violation and whether the violator has a history of previous violations:

- **Issue a written notice of violation;**
- **Issue a written letter of warning;**
- **Issue a citation penalty of up to \$500;**
- **Conduct a formal hearing with fines up to \$5,000 per count, probation, and corrective action taken;**
- **Suspend, deny, revoke, or modify the certified applicators license.**

What should I do if I think there is a problem with the investigation or I forgot to tell the investigator something?

Call the investigator at his/her UDAF office using the number listed in this brochure. You may also contact the Pesticide Program Manager at the Salt Lake City office. Please call the investigator first. The investigator needs to know all the facts in order to do a thorough and professional job.

Who has access to information gathered in an investigation?

Under Government Records Access and Management Act (GRAMA), contained in Section 63-2 of the Utah Code, the public has the right to view and obtain case files after a pesticide investigation is completed. UDAF policy requires that all requests for case files be in writing. GRAMA allows the department to charge a fee for the costs involved in responding to a public information request. These costs may include document duplication, labor, and mailing costs. UDAF will either approve, partially approve, or deny the request within three business days or notify the applicant that an extension (up to 10 business days) is necessary to process the request.

Will I be compensated for damages?

The Utah Pesticide Control Act contains no provisions for compensation to be made to individuals. Private civil action may be required in some instances to recover damages that have been incurred.

If a misapplication or a spill occurs, what should I do?

UDAF highly recommends that individuals who believe they have been exposed to pesticides remove all clothing, take a shower, and seek medical attention immediately to treat any symptoms of pesticide poisoning. Separately launder contaminated clothes before wearing

them. Animals should be removed from a contaminated site or contaminated feed and given veterinary care immediately.

What are UDAF's goals for responding to complaints and the completion of a case report?

When you contact UDAF to ask for assistance, an investigator will respond promptly. You will be asked to complete a formal complaint; this may be required in order to initiate an investigation. Each case may vary in the length of time it takes to complete. Variables that affect the duration of an investigation include complicated laboratory analysis, the need for follow-up visits and interviews, and overall investigative caseload. UDAF's goal is to complete the information gathering, written report, and review in a timely manner. The department remains committed to providing a professional, unbiased, complete, and thorough investigation.

If you have additional questions or would like to know more about the investigative process, please contact the UDAF office nearest you.

Brigham City (435) 734-3327
Roosevelt.....(435) 725-0202
Farmington (801) 451-3406
Logan..... (435) 752-6263
Ogden (801) 399-8380
Price..... (435) 636-3234
Provo (801) 851-8492
Richfield (435) 893-0476
Salt Lake City (801) 538-7185
St. George (435) 634-5708

Or the state of Utah Pesticide Certification Office in

Salt Lake City.....(801) 538-7185

UDAF recognizes the Idaho State Department of Agriculture in the development of this publication.

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CONTINUING EDUCATION UNITS

- Up to 6 credits from the internet
Applicators may go to the following websites to gain recertification credits. These sites may require a fee. After completing the online course, print out a certificate. (may be used in any category)
 1. www.pep.wsu.edu/RecertOnline.html Washington State University Website
 2. www.pesteducation.com Variety of topics
 3. www.pestnetwork.com General subject matter and some specific courses
 4. www.pestweb.com Maintained by Univar
 5. www.cai.iastate.edu Crop Advisor Institute at Iowa State University
 6. www.pt-u.com Whitmire Microgen, suited towards PCO's
 7. www.ctnedu.com CTN Education Services, Variety of Topics
 8. www.allstarce.com All Star Professional Training, Variety of topics
- Unlimited credits from pre-approved meetings, conferences, seminars and business, school and government in-service training. (category specific)
- Training from professional organizations of arborist, horticulturalists, Master Gardener, etc.. will be approved on a case by case basis. Contact Drew Matthews to confirm. (dmatthews@utah.gov)
- CPR/First Aid/HazMat Training- Please be able to provide documentation to verify hours
- UDAF Workshops (6 credits each year)

It is the pesticide applicators responsibility to keep record of CEU's obtained within the three year recertification process.

R68. Agriculture and Food, Plant Industry.

R68-7. Utah Pesticide Control Rule.

R68-7-1. Authority.

Promulgated under authority of Section 4-14-6.

R68-7-2. Registration of Products.

All pesticide products distributed in Utah shall be officially registered annually with the Utah Department of Agriculture and Food.

(1) Application for registration shall be made to the Department on forms prescribed and provided by them and shall include the following information:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant.

(b) The name of the pesticide.

(c) A complete copy of the label which will appear on the pesticide.

(2) The Department may require submission of the complete formula of any pesticide if it is deemed necessary for administration of the Utah Pesticide Control Act. If it appears to the Department that the composition of the product is such as to warrant the proposed claims for it, and if the product and its labeling and any other information which may be required to be submitted comply with the requirements of the act, the product shall be registered.

(3) The registrant is responsible for the accuracy and completeness of all information submitted concerning application for registration of a pesticide.

(4) Once a pesticide is registered under the Act, no further registration is required: Provided that,

(a) the product remains in the manufacturer's or registrant's original container; and

(b) the claims made for it, the directions for its use, and other labeling information do not differ in substance from the representations made in connection with the registration.

(5) Whenever the name of a pesticide product is changed or there are changes in the product ingredients, a new registration shall be required. Other labeling changes shall not require re-registration, but the registrant shall submit copies of all changes to the Department as soon as they are effective.

(6) Whenever a registered pesticide product is to be discontinued for any reason, except when suspended or canceled by the U.S. Environmental Protection Agency (EPA), the Utah Department of Agriculture and Food requires said product to be registered for two years from date of the notice of discontinuation. When a product is found in commercial trade after the discontinuation period, the Department will require that the registrant register said product as outlined in Chapter 14, Utah Pesticide Control Act, 4-14-3(1).

(7) The Department may exempt any pesticide that is determined either (1) to be adequately regulated by another federal agency, or (2) be of a character which is unnecessary to subject to Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

(8) A registrant who desires to register a pesticide to meet special local needs pursuant to Section 24(c) of FIFRA shall comply with Section 4-14-3 of the Utah Pesticide Control Act.

(9) No registration is required for a pesticide distributed in Utah pursuant to an experimental use permit issued by the EPA or under Section 4-14-5 of the Utah Pesticide Control Act.

(10) A registration fee determined by the Department, pursuant to Subsection 4-2-2(2), shall be paid annually for each product, regardless of the number of products registered per applicant.

(11) Each registration is renewed for a period of one year upon payment of the annual renewal fee determined by the Department, pursuant to Subsection 4-2-2(2). It shall be paid on or before June 30 of each year. If the renewal of a pesticide registration is not received prior to July 1 of that year, an additional fee determined by the Department pursuant to Subsection 4-2-2(2), shall be assessed and added to the original registration fee and shall be paid by the applicant before the registration renewal for that pesticide shall be issued.

R68-7-3. Product Labeling.

(A) Each container of pesticide distributed in Utah shall bear a label showing the information set forth in Section 4-14-4.

(B) All pesticide labels shall contain statements, words, graphic material, and any other information required by the EPA.

R68-7-4. Classification of Pesticides.

The commissioner shall classify all pesticide products registered in Utah for "restricted-use" or "general-use" according to standards consistent with Section 3 of FIFRA. The commissioner shall consider all pesticides and uses classified as restricted by the EPA to be restricted in the State of Utah. The Commissioner may also restrict the use of additional pesticides if it is found that the characteristics of such pesticides require that their uses be restricted to prevent damage to property other than the property to which they are directly applied or to persons, animals, crops or vegetation other than the pests which they are intended to destroy. Individuals not appropriately certified are prohibited from using restricted-use pesticides, with the exception of those competent individuals working under the direct supervision of a certified private applicator.

R68-7-5. Classification of Pesticide Applicators.

Pesticide applicators shall be classified as commercial, non-commercial, or private applicators according to the following criteria:

(1) Commercial Applicator - any person who uses any pesticide for hire or compensation.

(2) Non-commercial Applicator - any person working as an individual or an employee of a firm, entity or government agency who uses or demonstrates the use of any restricted-use pesticide and who does not qualify as a private applicator, nor require a commercial applicator's license.

(3) Private Applicator - any person or his/her employer who uses or supervises the use of any restricted-use pesticide for the purpose of producing any agricultural commodity on property owned or rented by the employer or (if applied without compensation other than trading of services between producers of agricultural commodities) on the property of another person.

R68-7-6. Categorization of Pesticide Applicators.

Commercial and Non-commercial applicators shall be categorized in one or more of the categories defined below, based on the application site and the type of work they perform.

(1) Agricultural Pest Control.

(a) Plant. This category includes applicators using pesticides to control pests in the production of agricultural crops including, but not limited to, field crops, vegetables, fruits, pasture, rangelands, and non-crop agricultural lands.

(b) Animal. This category includes applicators using pesticides on animals including, but not limited to, beef and dairy cattle, swine, sheep, horses, goats, poultry, and to places on or in which animals inhabit. Doctors of veterinary medicine or their employees engaged in the business of applying pesticides for hire, publicly representing themselves as pesticide applicators or engaged in large-scale use of pesticides, are included in this category.

(2) Forest Pest Control. This category includes applicators using pesticides in forests, forest nurseries, and forest seed-producing areas.

(3) Ornamental and Turf Pest Control. This category includes applicators using pesticides to control ornamental and turf pests in the maintenance and production of ornamental trees, shrubs, flowers and turf. This includes controlling pests on sidewalks, driveways, and other similar locations.

(4) Seed Treatment. This category includes applicators using pesticides on seeds.

(5) Aquatic Pest Control.

(a) Surface Water: This category includes applicators applying pesticides to standing or running water, excluding applicators engaged in public health-related activities included in R68-7-6(8).

(b) Sewer Root Control: This category includes applicators using pesticides to control roots in sewers or in related systems.

(6) Right-of-Way Pest Control. This category includes applicators using pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, or other similar areas.

(7) Structural and Health-related Pest Control. This category excludes any fumigation pesticide application and is limited to applicators using pesticides in, on, or around food handling establishments; human dwellings; institutions, such as schools and hospitals; industrial establishments, including warehouses, storage units and any other structures and immediately adjacent areas, public or private; to control household pests, fabric pests, and stored-product pests and to protect stored, processed and manufactured products. This category includes vertebrate pest control in and immediately adjacent to buildings. "Immediately adjacent to a structure" means not further than three (3) feet from the structure. If the labeling for the structural pesticide permits structural use on structural pests and calls for application beyond three feet the application can be made, but cannot exceed the maximum distance prescribed by the label.

(8) Public Health Pest Control. This category includes applicators applying the use of pesticides for the management and

control of pests having medical and public-health importance.

(9) Regulatory Pest Control.

(a) This category is limited to state and federal employees or persons under their direct supervision, who apply pesticides in a mechanical ejection device, or other methods to control regulated pests.

(b) This category is limited to state and federal employees or persons under their direct supervision, who apply pesticides in a protective collar, or other methods to control regulated pests.

(10) Demonstration, Consultation and Research Pest Control. This category includes individuals who demonstrate or provide instruction to the public in the proper use, techniques, benefits and methods of applying restricted-use pesticides. This category includes, but is not limited to agricultural compliance specialists, extension personnel, commercial representatives, consultants and advisors, and persons conducting field research with restricted-use pesticides. In addition, they shall meet the specific standards that may be applicable to their particular activity.

(11) Aerial Application Pest Control. This category includes applicators applying pesticides by aircraft. Aerial applicators are required to be certified in the Aerial-Application Pest-Control Category and any other categories of intended application.

(12) Vertebrate Animal Pest Control. This category includes applicators applying pesticides in the control of vertebrate pests outdoors, such as rodents, birds, bats, predators or domestic animals.

(13) Fumigation/Stored-Commodities Pest Control. This category includes applicators using fumigants to control pests in, on, or around soils, structures, railroad cars, stored grains, manufactured products, grain elevators, flour mills, and similar areas and items.

(14) Wood-Preservation Pest Control. This category includes applicators who apply wood-preservative pesticides to wood products, such as fence posts, electrical poles, railroad ties, or any other form of wood products.

(15) Wood-Destroying Organisms Pest Control. This category includes applicators using pesticides to control termites, carpenter ants, wood-boring or tunneling insects, bees, wasps, wood-decaying fungi and any other pests destroying wood products.

R68-7-7. Standards of Competence for Certification of Applicators.

Applicators must be at least 16 years of age and demonstrate competence in the use and handling of pesticides according to the hazards involved in their particular classification by passing the tests and becoming certified as outlined in R68-7-8. Upon their becoming certified, the department will issue a license which will qualify an applicator to purchase and apply pesticides in the appropriate classification. Standards for certification of applicators as classified in R68-7-8 have been established by the EPA and such standards shall be a minimum for certification of applicators in the State of Utah.

(1) Commercial and Non-Commercial Applicators.

Commercial and non-commercial applicators shall demonstrate practical knowledge by written examination(s) of the principles and practices of pest control and safe use, storage and transportation of pesticides, to include the general standards applicable to all

categories and the standards specifically identified for each category or subcategory designated by the applicant, as set forth in 40 CFR, Section 171.4 and the EPA approved Utah State Plan for certification of pesticide applicators. In addition, applicators applying pesticides by aircraft shall be examined on the additional standards specifically identified for this method of application as set forth herein.

(a) Exemptions. The standards for commercial and non-commercial applicators do not apply to the following persons for purposes of these rules:

(i) Persons conducting laboratory-type research involving pesticides; and

(ii) Doctors of medicine and doctors of veterinary medicine applying pesticides or drugs or medication during the course of their normal practice and who do not publicly represent themselves as pesticide applicators.

(2) Aerial Application. Additional Standards.

Applicators shall demonstrate by examination practical knowledge of pest control in a wide variety of environments. These may include, but are not limited to, agricultural properties, rangelands, forestlands, and marshlands. Applicators must have the knowledge of the significance of drift and of the potential for non-target injury and the environmental contamination. Applicators shall demonstrate competency as required by the general standards for all categories of certified commercial and non-commercial applicators. They shall comply with all standards set forth by the Federal Aviation Administration (FAA) and submit proof of current registration by that agency as a requirement for licensing as an aerial applicator.

(3) Private Applicators. Private applicators shall demonstrate practical knowledge of the principles and practices of pest control and the safe use of pesticides, to include the standards for certification of private applicators as set forth in 40 CFR Section 171.5. In addition, private applicators applying restricted-use pesticides by aircraft shall show practical knowledge of the additional standards specifically identified for that method of application in R68-7-6(11) of these rules.

(4) Supervision of Non-Certified Applicators by Certified Private Applicators.

(a) A certified private applicator that functions in a supervisory role shall be responsible for the actions of any non-certified applicators under his/her instruction and control.

(b) A certified private applicator shall provide written or oral instruction for the application of a restricted-use pesticide applied by a non-certified applicator under his/her supervision when the certified applicator is not required to be physically present. If an applicator cannot read, instructions shall be given in a language understood by the applicator. The instructions shall include procedures for contacting the certified applicator in the event he/she is needed.

(5) The certified applicator shall be physically present to supervise the application of a restricted-use pesticide by a non-certified applicator if such presence is required by the label of the pesticide being applied.

R68-7-8. Certification Procedures.

(A) Commercial Applicators.

(1) License Required. No person shall apply, advertise for, solicit, or hold oneself out as willing to engage in the business of applying any pesticide for hire or compensation to the lands of another at any time without becoming certified and obtaining a commercial applicator's license and a pesticide business license as described in 4-14-13 issued by the department, or working for a company which has already attained such business license.

(2) The pesticide applicator business license fee will be determined by the number of commercial pesticide applicators employed by the business. The fee ranges are 1-4 commercial pesticide applicators, 5-9 commercial pesticide applicators and 10 or more commercial pesticide applicators.

(a) Application for such licenses shall be made in writing on an approved form obtained from the Department and shall include such information as prescribed by the Department. Each individual performing the physical act of applying pesticides for hire or compensation must be licensed as a commercial applicator. An applicator and business license fee determined by the Department, pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification.

(b) A commercial pesticide applicator operating under more than one business identity or name from a single business location shall be licensed separately for each business identity or name.

(c) A commercial pesticide applicator with a single business identity or name but operating from more than one business location shall be licensed at each separate business location.

(d) If the name selected by an applicant for a license to act, operate, or do business or advertise as a commercial or noncommercial applicator in the State of Utah is the same or so near the same as that of another licensee already doing business in the state as to cause confusion in the minds of the people or is likely to deceive the public, the Department may require the applicant to apply for a license under a different name that is distinguishable from the names of existing licensees. Any determination made pursuant to this rule shall be at the sole discretion of the Department.

(e) Each business location licensed shall have a minimum of one certified applicator at that location who is certified in each licensed category for which applications are made.

(f) A franchised business shall have a separate license and a separate certified applicator at each business location.

(3) Written Examination. An applicant for a commercial pesticide license shall demonstrate competency and knowledge of pesticide applications by passing the appropriate written examinations. Examination and educational-material fees determined by the Department, pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification. Any person applying to become certified or recertified must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. All applicants for a commercial applicator license must pass the general examination and the examination(s) pertaining to the category(s) for which they desire to be licensed.

Certification examinations shall be conducted by representatives of the commissioner by appointment. A score of 70 or above is required to pass any written examination. A score of less than 70 on the general standards or category examinations shall result in denial of certification of that test. A person must pass the general and at least one category examination before becoming certified. An applicant scoring less than 65% on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting. After paying the certification fee a person may attempt to pass any of the required exams up to three times. If any exam is not passed within three attempts, a person must wait fourteen (14) calendar days and pay a retest fee for each exam failed and he/she will be allowed up to two additional attempts to pass an exam. If any exam is again not passed, a person must wait another fourteen (14) calendar days and again pay a retest fee for each exam failed and he/she will again be allowed up to two additional attempts to pass an exam. If all required exams are not passed after seven attempts, a person must again pay the certification fee and the testing process will begin again; the original certification fee and any retesting fees will not be refunded.

(4) License Issuance. If the Department finds the applicant qualified to apply pesticides in the classifications applied for and for which the prescribed fee(s) have been paid, the Department shall issue a commercial applicator's license. The license shall expire December 31 of the third calendar year unless it has been revoked or suspended by the commissioner for cause, which may include any of the unlawful acts given in R68-7-14. If an application for a commercial license is denied the applicant shall be informed of the reason. The applicator is required to have their license in their immediate possession at all times when making a pesticide application. If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee determined by the Department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued. A pesticide applicator business license shall be required for each pesticide business location with applicators working in the state.

(5) Any new applicator or applicator business license licensing after November 1 will be licensed for the remainder of that year and the following three calendar years.

(6) License Recertification.

(a) Each license shall expire on December 31 of the third calendar year of its issuance. Commercial applicators must recertify every three years, and be subject to re-examination at any time. Information that may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology, and to satisfy certification requirements as described herein, or meet any other requirements specified by the commissioner shall be added to this rule as often as necessary.

(b) Recertification options:

(i) Complete the original certification process of taking the required general and category test(s) and passing each required test with a score of 70% or above or;

(ii) Attend approved recertification courses and pass the required category examinations with a score of 70% or above or;

(iii) Participate in approved continuing education courses and accumulate 24 credits during the valid three years of certification.

(7) Records Maintained. Commercial applicators shall keep and maintain records of each pesticide application. These records must be recorded within 24 hours after the pesticide application is made.

These application records must include the following information:

- (a) Name and address of property owner;
- (b) Location of treatment site, if different from (a);
- (c) The month, day and year when the pesticide was applied;
- (d) Brand name of pesticide, EPA registration number, rate of formulation (undiluted pesticide product as sold by the manufacturer) applied per unit area and total amount of diluted pesticide used;
- (e) Purpose of application (target site and pest to be treated);
- (f) The name, business address and license number of the certified applicator who applied the pesticide.

Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee shall, upon request, be furnished a copy of such records by the commercial applicator.

(8) Exemption.

The provisions of this section relating to pesticide licenses and requirements for their issuance do not apply to private pesticide applicators using pesticides in the production of any agricultural commodity and applying pesticides for his/her neighbors provided he/she operates and maintains pesticide application equipment for his/her own use, is not engaged in the business of applying pesticides for hire or compensation in any form other than trading of services between producers of agricultural commodities, does not publicly represent himself/herself as a pesticide applicator, and operates his/her pesticide application equipment only in the vicinity of his/her owned or rented property; provided, however, that when he/she applies a restricted-use pesticide, he/she shall comply with the certification requirements specified herein.

(B) Non-Commercial Applicators.

(1) License Required. No non-commercial applicator shall use or demonstrate the use of any restricted-use pesticide without becoming certified and obtaining a non-commercial applicator's license issued by the Department. Application for such license shall be made in writing on an approved form obtained from the Department and shall include such information as prescribed by the Department. Each individual performing the physical act of applying restricted-use pesticides must be licensed.

(2) Written Examination. An applicant for a non-commercial pesticide license shall demonstrate to the Department competency and knowledge of pesticides and their applications by passing the appropriate written examinations. Examination and educational-material fees determined by the Department pursuant to Subsection 4-2-2(2), shall be assessed at the time an individual takes the general and category tests. All applicants for a non-commercial applicator license must successfully pass a general examination based upon standards applicable to all categories. After passing the general examination, applicants must pass the examination(s) pertaining to the category(s) for which they desire to be licensed. Certification

examinations shall be conducted by representatives of the commissioner by appointment. A score of 70 percent or above is required for passing any written examination. A score of less than 70 percent on the general or category examinations shall result in denial of certification in that category. A person must pass the general and at least one category examination before becoming certified. An applicator scoring less than 65 percent on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting. Any person applying to become certified or recertified must demonstrate the ability to:

(a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. After paying the certification fee a person may attempt to pass any of the required exams up to three times. If any exam is not passed within three attempts, a person must wait fourteen (14) calendar days and pay a retest fee for each exam failed and he or she will be allowed up to two additional attempts to pass an exam. If any exam is again not passed, a person must wait another fourteen (14) calendar days and again pay a retest fee for each exam failed and he/she will again be allowed up to two additional attempts to pass an exam. If all required exams are not passed after seven attempts, a person must again pay the certification fee and the testing process will begin again. The original certification fee and any retesting fees will not be refunded.

(3) License Issuance. If the Department finds the applicant qualified to apply pesticides in the classification(s) applied for, the Department shall issue a non-commercial applicator's license limited to such activities and classifications applied for. The applicator is required to have his/her license in his/her immediate possession at all times when making a pesticide application. If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee as determined by the Department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued. The license shall expire December 31, three calendar years after the issuance of the certification, unless it has been suspended or revoked by the commissioner for cause, which may include any of the unlawful acts given in R68-7-14. If an application for a non-commercial license is denied the applicant shall be informed of the reason.

(4) Any new applicator licensing after November 1 will be licensed for the remainder of that year and the following calendar year.

(5) License Recertification. Non-commercial applicators must recertify every three years, and be subject to re-examination at any time. Information may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology, and to satisfy certification requirements as described herein, or any other requirements specified by the commissioner shall be added to this rule as often as necessary.

Recertification options are:

(a) Complete the original certification process of taking the required general and category test(s) and passing each required test with a score of 70% or above or;

(b) Attend approved recertification courses and pass the required category test(s) with a score of 70% or above or;

(c) Participate in approved continuing education courses and accumulate 24 credits during the valid three years of certification.

(6) Records Maintained. Non-commercial applicators shall keep and maintain records of each application of any restricted-use pesticide. These application records must be recorded within 24 hours after the pesticide application is made. These records must include the following information:

(a) Name and address of property owner;

(b) Location of treatment site, if different from (a);

(c) The month, day and year when the pesticide was applied;

(d) Brand name of pesticide, EPA registration number, rate of formulation (undiluted pesticide concentrate product as sold by the manufacturer) applied per unit area, and total amount of diluted pesticide used;

(e) Purpose of application (target site and pest to be treated);

(f) The name, address, and license number of the certified applicator who applied the pesticide.

Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee shall, upon request, be furnished a copy of such records by the non-commercial applicator.

(7) Exemption. The provisions of this section shall not apply to persons conducting laboratory research involving restricted-use pesticides as drugs or medication during the course of their normal practice. Non-Commercial applicators engaged in public-health related activities are exempt from recording the name and address of property owners, but are required to document a detailed description of treatment areas by using such means as GPS coordinates or other locality descriptions for record keeping purposes.

(C) Private Applicators.

(1) License Required. No private applicator shall purchase, use or supervise the use of any restricted-use pesticide without a private applicator's license issued by the Department. Issuance of such license shall be conditioned upon the applicator's complying with the certification requirements determined by the Department as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons. Application for a license shall be made in writing on a designated form obtained from the Department.

(2) Certification Methods. Any person applying to become licensed must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. All first-time Private Applicators must successfully pass a written test.

A score of 70 percent or above is required for passing any written test. A score of less than 70 percent will result in the denial of certification. An applicator scoring less than 65% on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting.

(3) Emergency-Use Permit. A single restricted-use pesticide may be purchased and used by a non-certified person on a one-time-only basis if an emergency control situation is shown to exist. Before purchasing the product, the applicant shall participate in a discussion concerning safe use of the specific product with a representative of the Utah Department of Agriculture and Food. Following an adequate discussion of same, the Department of Agriculture and Food may issue the applicant a permit to purchase and use the product on a specific site on a one-time-only basis. The applicant shall be required to become certified before being authorized to further purchase and use restricted-use pesticides.

(4) License Issuance. If the Department finds the applicant qualified to apply pesticides, the applicant shall be issued a private applicator's license. Examination and educational-material fees determined by the Department pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification. The license issued by the commissioner shall expire on December 31, three calendar years after issuance, unless the license has been revoked or suspended by the commissioner. If an application for a private license is denied, the applicant shall be informed of the reason. If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee determined by the Department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued.

(5) Any new applicator licensing after November 1 will be licensed for the remainder of that year and the following calendar year.

(6) License Renewal, Recertification. A person applying to recertify must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate the mixing and application of pesticides in a safe way. All certified private applicators must recertify every three years, or more frequently if determined necessary by the Department, by satisfying any of the following procedures or any other requirements specified by the Department.

(a) Completion of a recertification course approved by the Utah Department of Agriculture and Food and passing a written test with a score of 70% or above or;

(b) Complete the original certification process of taking the required written test(s). A score of 70 percent or above is required to pass or;

(c) Accumulate six credits of approved continuing education during the valid three years of certification.

(d) Records Maintained. Private applicators must keep and maintain records according to United States Department of Agriculture (USDA) requirements.

(D) Employees of Federal Agencies. Federal Government Employees wishing to be certified in Utah shall be required to qualify as non-commercial applicators by passing the appropriate examinations, unless such requirement is waived upon presentation of adequate evidence of certification in the appropriate categories from another state with comparable certification requirements. In the event a federal agency develops an applicator certification plan which meets

the Utah certification standards, employees of that agency who become certified under that plan may qualify for certification in the State of Utah.

(E) Certification of Out-of-State Applicants.

When a pesticide applicator is certified under an approved state plan of another state and desires to apply pesticides in Utah, he/she shall make application to the Department and shall include, along with the proper fee and any other details required by the Act or these rules, a true copy of his/her credentials as proof of certification in the person's state of residence and a letter from that state's department of agriculture stating that he/she has not been convicted of a violation of any pesticide law and is currently licensed as a pesticide applicator in that state. The Department may upon review of the credentials, issue a Utah certification to the applicator in accordance with the use situations for which the applicator is certified in another state without requiring determination of competency; provided that the state having certified the applicator will similarly certify holders of Utah licenses or certificates and has entered into a reciprocal agreement with the State of Utah. Out-of-state pesticide applicators who operate in Utah will be subject to all Utah laws and rules.

(F) Change of Licensee Information

(1) Every certified commercial, non-commercial, and private applicator shall notify the Department of any change in, but not limited to applicator's name, address, and phone number and/or change of employer within 30 calendar days of the change.

(2) Every commercial pesticide business licensee shall notify the Department of any changes in, including but not limited to, ownership, company name, owner or manager's name company address, and phone number within 30 calendar days of the change.

(a) Business licenses are nontransferable, and in case of a change in business ownership, a new application and fee are required.

R68-7-9. Dealer Licensing.

(A) In order to facilitate rules of the distribution and sale of restricted-use pesticides, it is necessary to license dealers who dispense such materials.

(1) License Required.

It shall be unlawful for any person to act in the capacity of a restricted-use pesticide dealer, or advertise as, or presume to act as such a dealer at any time without first having obtained a license from the Department. A license shall be required for each location or outlet located within this state from which such pesticides are distributed; provided, that any manufacturer, registrant or distributor who has no pesticide dealer outlet licensed within this state and who distributes a restricted-use pesticide directly into Utah shall obtain a pesticide dealer's license for his/her principal out-of-state location or outlet; provided further, that any manufacturer, registrant or distributor who sells only through or to a pesticide dealer is not required to obtain a pesticide dealer's license.

(2) License Issuance. Application for a pesticide dealer's license shall be on a form prescribed by the Department and shall be accompanied by a license fee determined by the Department pursuant to subsection 4-2-2(2). If the Department finds the applicant

qualified to sell or distribute restricted-use pesticides and the applicant has paid the prescribed license fee, the Department shall issue a restricted-use pesticides dealer's license. This license shall expire December 31 of the third calendar year, unless it has been previously revoked or suspended by the commissioner for causes which may include any of the unlawful acts included in R68-7-14.

(3) License Renewal. License-renewal fees are payable triennially before January 1. If the renewal of a pesticide dealer's license is not received prior to January 1 of the renewal year, an additional fee determined by the Department pursuant to Subsection 4-2-2(2), shall be assessed and added to the original license fee and shall be paid by the applicant before the license renewal shall be issued.

(4) Records Maintained. Each dealer outlet licensed to sell restricted-use pesticides is required by the Department to maintain a restricted-use pesticide sales register by entering all restricted-use pesticide sales into the register at the time of sale.

The restricted-use pesticide sales register must be available in an electronic format approved by the Department. The electronic register form, shall include the following information:

(a) The Corporate or Company Name.
(b) The name of the branch store that made the sale.
(c) The store's complete Restricted-Use Pesticide dealer license number, including the prefix.

(d) The complete sale date including the month, day and year.

(e) The first and last name of the salesperson that made the sale.

(f) The first and last name of the buyer.

(g) The buyer's complete Pesticide Applicator License number, including the prefix.

(h) If the buyer was authorized by letter, the authorization letter must be kept on file.

(i) If the buyer used a temporary permit, a copy of the permit must be kept on file.

(j) The buyer's complete street address, city, state and zip code.

(k) The brand name of the product sold, its EPA Registration Number and the quantity sold.

(l) The product container size and its unit of measure (i.e. gallons, liters, etc.). Such records shall be kept for a period of two years from the date of restricted-use pesticide sale and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee, upon request, shall be furnished a copy of such records by the restricted-use pesticide dealer.

(5) Submission of Electronic records. On July 1 of each year, Dealers are required to submit their Restricted-Use Pesticide sales records for the period starting the previous July 1 through June 30 of the current year. The due date for submission is July 31 of the current year.

(6) Exemption. Provisions of this section shall not apply to:

(a) a licensed pesticide applicator who sells restricted-use pesticides only as an integral part of his/her pesticide application service when such pesticides are dispensed only through equipment used

for such pesticide application (b) Federal, state, county, or municipal agency which provides restricted-use pesticides only for its own programs shall be exempt from the license fee but must meet all other requirements of a pesticide dealer.

(7) Responsible for Acts of Employees. Each pesticide dealer shall be responsible for the acts of each person employed by him/her in the solicitation and sale of restricted-use pesticides and all claims and recommendations for use of restricted-use pesticides. A dealer's license shall be subject to denial, suspension or revocation for any violation of the Pesticide Control Act or rules promulgated thereunder, whether committed by the dealer or by the dealer's officer, agent, or employee.

R68-7-10. Responsibilities of Business and Applicator.

(A) Business Licensee Duties and Responsibilities

(1) A business licensee shall ensure that a qualifying party (licensed applicator) of the business licensee receives the training that the applicator requires to comply fully with the Utah Pesticide statutes and rules and label and labeling directions.

(B) Responsibility for business and employee(s)

(1) A business licensee, qualifying party and/or applicator may be held responsible for the acts or omissions of another person who is employed by the business licensee. It is the business' responsibility to properly train, equip, and prepare the other person(s) and maintain records of proper training and equipping.

(2) Failure to fully respond to requests by the commissioners designated agent, in a stated time, for information relating to training and equipping will be evidence for a failure to properly train or equip. The supervising licensee has the burden of proof by a preponderance of the evidence that the business licensee, qualifying party or applicator has fulfilled the required duties as prescribed by this chapter, rules adopted pursuant to this chapter or a written order of the commissioner.

(C) Use of business name and license number.

(1) A business licensee must prominently display the license issued by the Department at the primary business office and each branch office.

(2) A business licensee shall prominently display the business name and license number, as recorded on the license issued by the Department, on:

(a) Customer proposals or contracts for pest management services;

(b) Service records and service notifications;

(c) Service vehicles and trailers used in providing pest management services. The business licensee shall ensure that the business name and license number is displayed on a service vehicle or trailer used in providing pest management services conforms to the following:

(i) Is affixed to the service vehicle or trailer used in providing pest management services within 30 days after the Department issues the license or issues a business license change or after the service vehicle or trailer is acquired, whichever is sooner.

(ii) Is in a color that contrasts with the color of the service vehicle and trailer;

(iii) Is prominently displayed on both sides of the service

vehicle or trailer;

(iv) Uses at least two-inch letters for the principal words in the business name and at least one and one-half inch letters for other words in the business name; and

(v) Uses at least two-inch numbers for the license number.

(vi) Letters and numbers must be weatherproof.

(3) A business licensee that always uses a service vehicle and trailer together is required to mark only the service vehicle or trailer as described in subsection (2)(c). A business licensee that uses a vehicle only for sales, solicitations, or solely for inspections and does not carry a pesticide, and does not otherwise use the vehicle to provide a pest management service, is not required to mark the vehicle as described in subsection (2)(c).

(4) When complying with subsection (2), a business licensee may use a slogan, trade name, or trade mark in addition to the business name and license number. When complying with subsection (2), a business licensee may use a word or phrase to indicate its former licensed business name if it had a previously licensed business name.

(D) Customer Notification.

(1) Prior to the time of each application of a restricted-use pesticide with a Danger/Danger-Poison signal word, the licensed commercial applicator or an employee of the licensed pesticide business shall provide the customer with a written statement containing the following information:

(a) Business name and telephone number of the licensed business.

(b) Name and license number of the licensed applicator who made the application

(c) Date and time of application.

(d) Type of pesticide application service and brand name of pesticide(s) applied.

(e) Instructions to the customer to contact the business telephone number if more specific information is desired regarding the pesticide product applied.

(2) The written statement required in subsection (1) shall be provided to the customer by any of the following means:

(a) Leave at the residence.

(b) In the case of a multiunit residence leave with the property manager or his/her authorized representative, or

(c) Mail to the property manager or his/her authorized representative if management is located at a location other than the pesticide application site, within seven (7) calendar days prior to the date of the pesticide application.

R68-7-11. Termiticide Record Keeping. Additional Standards.

(A) In addition to the recordkeeping requirements contained in R68-7-8, the applicator will keep as records a diagram/graph of the structure treated that includes dimensions of the structure, including depth to footer.

(B) For post construction treatments the diagram/graph will also illustrate the area(s) where termites and/or termite activity was found.

(C) All records of applications for every individual structure must be kept together.

R68-7-12. Minimum Standards for Fumigant Applications.

(A) Application of fumigant products require strict adherence to the label and when required by the label, a verified and written Fumigation Management Plan (FMP) must be prepared in advance of treatment. A FMP must detail the information prescribed by the label. State standards for fumigation treatments of any space that can be occupied by a person, or non-target species, require the following:

(1) Persons present at the time of releasing the fumigant and during the initial ventilation.

(a) There shall be at least two persons, one of whom must be a certified applicator in the fumigation category, present at the time of the releasing of the fumigant and during the initial ventilation. During the interim, the premises shall be adequately safeguarded against entry by any person(s).

(2) Notification of local fire department and/or first responders.

(a) Prior to fumigation of any building or enclosed space, other than a fumigating vault, the certified applicator shall notify and provide the local fire department with the address of the fumigation job, time of gas release, kind of gas to be used, and beginning time of the aeration of the premises.

(3) Premises sealed.

(a) Premises to be fumigated shall be sealed in a manner that confines the fumigant to the space intended to be fumigated.

(4) Inspection of premises prior to releasing fumigant

(a) Immediately before releasing the fumigant, the fumigator shall conduct a thorough inspection of the premises to verify that no person(s) or non-target animals remain, and that effective precautions have been taken to safeguard occupants of neighboring buildings as set forth below.

(5) Fumigation of apartments within a multiple unit apartment building.

(a) Fumigation of apartments within a multiple unit apartment building may be fumigated only after proper sealing of the area being fumigated and after all apartments are vacated.

(b) All the adjacent units shall be properly ventilated during the entire exposure period.

(6) Notification of all dwellings or places of business within 100 feet of building being fumigated.

(a) All dwellings or places of business within 100 feet of the building being fumigated must be notified in writing in advance of the fumigation.

(b) All premises within 10 feet must be vacated during the fumigation and aeration periods.

(7) Warning signs.

(a) Warning signs shall be posted conspicuously at all entrances of the premise to be fumigated and at the entrances of all adjacent multiple units and structures within 10 feet and kept there during the entire fumigation and ventilation period. Signs shall be a minimum size of 8 1/2 inches by 11 inches and color to be conspicuous and bearing the word "poison" and display the skull and cross-bones, the name of the fumigant used, and the name, address and telephone number of the fumigator.

(b) Before the fumigant is released, all entrances leading

directly to the fumigated space shall be closed, sealed, and locked except exits to be used by fumigating crew. These exits shall be closed, sealed, and locked promptly after the fumigant has been released.

(8) Masks worn.

(a) All members of the fumigating crew must be equipped with a serviceable mask of a type approved by the U.S. Mines, Safety, and Health Administration with correct canister for the type of gas used.

(b) Masks shall be worn while in the enclosed space during and after release of the gas, and until initial ventilation is completed.

(9) Re-entering fumigated premises

(a) No one other than the fumigator shall be permitted to re-enter the fumigated premises until the fumigator has ascertained by personal inspection, with gas mask and with a chemical appropriate test, that the premises are safe for occupancy.

(b) Aeration must be conducted according to the product labeling and re-entry allowed according to levels specified on the label.

(10) Exceptions

(a) The subparts 1 through 9 may not apply to fumigants used to control insects or other pests outside of buildings, or for spot fumigations, or restrictive treatments inside a building, such as grain bins.

(i) Strict adherence to the label instructions must be adhered to during these applications.

(ii) During the ventilation period of a spot or restrictive fumigation, the premises shall not be occupied by anyone except the fumigator.

(iii) A warning gas is recommended where the fumigant is comparatively odorless.

(B) Fumigation of Burrowing Rodents require strict adherence to the label as well as a Fumigation Management Plan (FMP) that must contain the following information.

(1) Purpose of the application, indicate the exact pest to be controlled and the type of burrow system to be treated.

(2) Pesticide used. State the name of the pesticide, the EPA registration number, and dosage used.

(3) Property treated information. Record the property or facilities name and address. Verify the manager's name, and contact information.

(4) Licensed applicator information. Record licensed applicator's name, company, license number, phone numbers.

(5) Emergency Information. Note the phone number for the nearest hospital, fire department, police department, poison control center and the registrant of the fumigant.

(6) Instructions to personnel. Verify by signatures that all personnel has been instructed to:

(a) Report any accident or incident related to exposure, provide a telephone number for emergency response reporting.

(b) Report to proper authorities any theft of fumigant and/or equipment related to fumigation.

(7) Follow label directions. Monitoring, Notification, Sealing, Application Procedures, Fumigation Period, and Use Restrictions are to be followed per label instructions.

(8) Burrowing Rodent Fumigation Record Keeping. Additional Standards.

(a) In addition to the recordkeeping requirements contained in R68-7-8, the applicator will keep as part of the record a diagram/graph (to scale) of the property treated that includes dimensions of the property, any structure present, and mark each burrow treated on the diagram or graph.

R68-7-13. Transportation, Storage, Handling, Using and Disposal of Pesticides and Pesticide Containers.

All pesticide applying entities shall provide a secure pesticide and device storage area that complies with all federal, state, and local laws. The storage area may include an area on a service vehicle.

(1) No person shall transport, store, or dispose of any pesticide or pesticide containers in such a manner as to cause injury to humans, other nontarget species, or the environment.

(2) Pesticide containers shall be secured during transport by use of side or end racks, bracing, chocks, tie downs, or other means to prevent their sliding, falling, tipping, rolling, or falling off the vehicle with normal vehicle acceleration, deceleration, or change in direction.

(3) Portable tanks shall be secured to prevent their sliding, falling, tipping, or rolling with normal vehicle acceleration, deceleration, or change in direction. Stacking or wedging against ends, sidewalls, or doors of van bodies shall not be relied upon for securement.

(4) Pesticides in leaking, broken, corroded, or otherwise damaged containers shall not be displayed, offered for sale, or transported and shall be handled or disposed of in a manner that would not injure humans, other nontarget species, or the environment. Pesticides with obscured, illegible or damaged labels shall not be displayed, offered for sale, or sold.

(5) No person shall distribute or sell any pesticide unless it is in the registrant's or manufacturer's unopened, original container and the registered pesticide label is affixed to the container

(6) No person shall transport, handle, store, load, apply, or dispose of any pesticide, pesticide container, apparatus, or rinsate in such a manner as to pollute water supplies or waterways, or cause damage or injury to land, humans, desirable plants and animals, or wildlife. Provided that a pesticide labeled for aquatic use and used as directed shall not be considered a violation of this subsection. Disposing of pesticides at disposal sites approved by the appropriate agency complies with the requirements of this subsection. Toxicity, volatility, and mobility of pesticides shall be considered in complying with this subsection.

(7) No person shall pollute streams, lakes, or other water supplies during pesticide loading, mixing, and application. Adequate, functioning devices and procedures to prevent back siphoning shall be used.

(8) No pesticides shall be applied by aircraft or air blast sprayers to property abutting and/or adjacent to occupied schools in session, hospitals, nursing homes or other similar establishments under conditions that may result in contamination of these establishments or their premises.

(9) No person shall apply pesticides if weather conditions are such that physical drift or volatilization may cause damage to adjacent

land, injure humans, other nontarget species, or the environment.

(10) Requirements for unattended pesticides and their containers:

(a) Generally accepted good housekeeping practices shall be maintained for all pesticides and their containers.

(b) The provisions of (d) and (e) of this subsection and subsection (11) of this section shall not apply to empty pesticide containers when adequately decontaminated (e.g., appropriate triple rinsing or other label approved cleaning techniques).

(c) For the purposes of (d) and (e) of this subsection and subsection (11) of this section, pesticides and their containers at the loading area shall not be considered unattended during the spraying operation if the operator maintains either visual control or repeatedly returns at closely spaced intervals as to ensure safe monitoring of the pesticides and containers.

(d) Pesticides labeled with the signal word "danger/poison" and their containers shall be stored in a way which, when unattended, shall be so constructed and locked to prevent children, unauthorized persons, livestock, or other animals from gaining entry.

(e) Pesticides labeled with the signal word "danger" when not accompanied by the signal word "poison," pesticides labeled with the signal word "warning" and pesticides labeled with the signal word "caution" and their containers shall be stored in secured storage out of the reach of children in an enclosure as described in (d) of this subsection: Provided that metal containers, twenty-eight gallons and larger, with tight screw-type bungs and/or secured or locked valves shall be considered secured storage.

(11) Requirements for posting of storage area for pesticides and their containers labeled with the signal words "danger/poison":

(a) For purposes of this subsection, warning signs shall show the skull and crossbones symbol and the words: "Danger/Poison (Pesticide or Chemical) Storage Area/Keep Out" in at least two inch letters.

(b) Warning signs shall be posted:

(i) At each entrance or exit from a storage area and on each exterior wall, so that a sign is visible from any direction;

(ii) If the pesticide storage area is contained in a larger, multipurpose structure, warning signs shall be clearly visible on each entrance of the storage area.

(12) In accordance with State of Utah Agricultural Code, the Utah Department of Agriculture and Food hereby adopts the applicable portions of 40 CFR Part 152 Subpart A Section 152.3 and Part 165, Subparts A through E.

R68-7-14. Unlawful Acts.

Any person who has committed any of the following acts is in violation of the Utah Pesticide Control Act or rules promulgated thereunder and is subject to penalties provided for in Sections 4-2-2 through 4-2-15:

(1) Made false, fictitious, or fraudulent claims, written or spoken misrepresenting the use, effect of pesticides, certification of applicator, or methods to be utilized;

(2) Applied known ineffective or improper pesticides;

(3) Operated in a faulty, careless or negligent manner;

(4) Neglected or, after notice, refused to comply with the provisions of the Act, these rules or of any lawful order of the department;

(5) Refused or neglected to keep and maintain records required by these rules, or to make reports when and as required;

(6) Made false or fraudulent records, invoices or reports;

(7) Engaged in the business of, advertised for, or held self out as applying a pesticide for hire or compensation on the lands of another without having a valid commercial applicator's license;

(8) Purchased, Used, or supervised the use of, a pesticide which is restricted to use by "certified applicators" without having qualified as a certified applicator or designated as a certified private applicators agent;

(9) Used fraud or misrepresentation in making application for, or renewal of, a registration, license, permit or certification;

(10) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;

(11) Used or caused to be used any pesticide in a manner inconsistent with its labeling or rules of the department if those rules further restrict the uses provided on the labeling;

(12) Aided or abetted a licensed or an unlicensed person to evade the provisions of the Act; conspired with such a licensed or an unlicensed person to evade the provisions of the Act; or allowed one's license or permit to be used by another person;

(13) Impersonated any federal, state, county, or other government official;

(14) Distributed any pesticide labeled for restricted use to any person unless such person or his/her agent has a valid license, or permit to use, supervise the use, or distribute restricted-use pesticide;

(15) Applied pesticides onto any land without the consent of the owner or person in possession thereof; except, for governmental agencies which must abate a public health problem.

(16) For an applicator to apply a termiticide at less than label rate.

(17) For an employer of a commercial or non-commercial applicator to allow an employee to apply pesticide(s) before that individual has successfully completed the prescribed pesticide certification procedures.

(18) For a pesticide applicator not to have his/her current license in his/her immediate possession at all times when making a pesticide application.

(19) To allow an application of pesticide to run off, or drift from the target area to cause plant, animal, human or property damage.

(20) Refused or neglected to register a pesticide applicator business with the Utah Department of Agriculture and Food or follow the rules set forth in section R68-7-8 for licensing of a commercial business.

(21) To handle or apply any registered pesticide for which the person does not have an appropriate, complete, or legible label at hand.

(22) Refused or neglected to comply with the Federal Container and Containment regulations.

(23) Failure to perform fumigation applications according to

the standards required by this rule.

(24) Failed to display business license numbers in accordance with this rule.

(25) Refused or neglected to notify the customer of the application of a restricted-use pesticide and the information detailed in R68-7-10.

(26) Failure of a qualifying party of the business licensee to train or prepare the applicator to comply fully with the Utah Pesticide statutes and rules and label and labeling directions.

(27) Failure to timely and fully respond to requests by the commissioners designated agent for information relating to training and equipping of applicators.

(28) Transported, stored, handled, used, or disposed of a pesticide or pesticides container inconsistent with rules specified in section R68-7-13.

R68-7-15. Penalty Matrix.

In the disposition of administrative cases, the Department shall use a penalty matrix to determine appropriate penalties. The Department shall calculate penalties based on the level of violation and the adverse effect(s) or potential adverse effects at the time of the incident(s) giving rise to the violation. The median penalty shall be assessed unless a proportionate adjustment is warranted and/or there are aggravating or mitigating factors present.

(1) The Department may consider circumstances enhancing or reducing the penalty based on the seriousness of the violation. Aggravating and mitigating factors include, but are not limited to, the following:

(a) The number of separate alleged violations contained within a single notice of intent.

(b) The magnitude of the harm, or potential harm, including quantity and/or degree, to humans, nontarget species, property, or the environment caused by the violation(s).

(c) The similarity of the current alleged violation to violations committed by the pesticide applicator and/or business during previous years.

(d) The extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.

(2) The Department will annually review past violation trends and update the penalty matrix based on compliance history.

(a) A copy of the penalty matrix will be made available from the Department upon request.

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