

R68. Agriculture and Food, Plant Industry.

R68-7. Utah Pesticide Control Rule.

R68-7-1. Authority.

Promulgated under authority of Section 4-14-106.

R68-7-2. Definitions.

(1) "Commercial pesticide applicator" means any person who uses or applies pesticides for hire or compensation, or who makes pesticidal claims, remedies, or advertises for hire or compensation, or who solicits the use of pesticides for hire or compensation.

(2) "Commercial pesticide business license" means a license issued by the department to a business responsible for supervising commercial pesticide applicators employed to apply pesticides on a commercial basis.

(3) "Department" means the Utah Department of Agriculture and Food

(4) "EPA WPS" means the U.S. Environmental Protection Agency (EPA) Worker Protection Standard, or the standards described in 40 CFR 170, as of January 2, 2017, which is incorporated by reference.

(5) "EPA WPS Trainer" means a certified pesticide applicator of any type who trains workers and handlers in the WPS requirements and may also be a graduate of an EPA approved WPS Train the Trainer Program.

(6) "Good standing" means a person has no outstanding infractions with the department and does not owe money to the department. A person who has resolved their infractions, entered into and complying with a settlement agreement with the department or who has not exhausted their rights to appeal are potentially excluded from this categorization with department approval.

(7) "Licensee" means the holder of a pesticide applicator license or a commercial pesticide business license issued by the department or a restricted use pesticide dealer.

(8) "Non-commercial pesticide applicator" means any person working as an employee of any entity, firm, or government agency who uses or demonstrates the use of any restricted use pesticide on the entity's property, or any property occupied, managed, or under the direction or authority of any entity, firm, or government agency, and does not require a commercial pesticide applicator's license.

(9) "Pesticide" means the same as the term is defined in Section 4-14-102.

(10) "Pesticide applicator" or "applicator" means a person who:

(a) applies or supervises the application of a pesticide; or

(b) is required by Title 4, Chapter 14, Utah Pesticide Control Act, to have a license.

(11) "Person" means an individual or entity

(12) "Private pesticide applicator" means any person who uses, or supervises the use of, any restricted use pesticide for producing any agricultural commodity on private property owned, rented, or leased by the pesticide applicator, or on the private property of another, if applied without compensation.

(13) "Qualifying party" means the same as the term is defined in Section 4-14-102.

(14) "Registrant" means the company responsible for the registration of a pesticide product.

(15) "Restricted use pesticide" or "RUP" means any pesticide or pesticide use restricted by the administrator of EPA or by the department.

R68-7-3. Registration of Products.

Pesticide products distributed in Utah shall be registered annually with the department.

(1) Application for registration shall be made to the department on the department website, or on forms prepared and provided by the department, and shall include the following information:

(a) the name, address, telephone number, and email address of the registrant, and the name, address, telephone number, and email address of the company whose name will appear on the label, if other than the registrant;

(b) the name of the pesticide product, including the EPA Registration Number;

(c) a list of the active ingredients;

(d) if the product is an RUP, a general use pesticide, or a product claiming a Federal Insecticide, Fungicide, and Rodenticide Act of 1972 (FIFRA), 7 U.S.C Section 136 *et seq.* Section 25(b) exemption; and

(e) a complete copy of the pesticide product label as it will appear on the pesticide product.

(2) The burden shall be on the registrant to notify the department of any changes to their contact information within 30 days.

(3) The department may require submission of the complete formula of any pesticide if it is deemed necessary for the administration of Title 4, Chapter 14, Utah Pesticide Control Act, FIFRA, or to enforce EPA requirements and guidelines.

(4) The product shall be registered if:

(a) it appears to the department that the composition of the product warrants the proposed claims for the product; and

(b) the product, its labeling, and any other information that may be required to be submitted, complies with the requirements of Title 4, Chapter 14, Utah Pesticide Control Act, FIFRA, and EPA rules, requirements and guidelines

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

(6) Once a pesticide product is registered no further state registration other than annual renewal is required, provided:

(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 does not differ in substance from the representations made in connection with the registration.

(7) If the name of a pesticide product is changed or there are changes in the product ingredients, a new registration is required. Other labeling changes do not require a new registration, but the registrant shall submit copies of any changes to the department as soon as they are effective.

(8) If a registered pesticide product is to be discontinued for any reason, except when suspended or canceled by the EPA, the licensee shall provide notice of discontinuation to the department.

(a) The department requires that a product be registered for a two-year discontinuation period starting from the date of the notice of discontinuation.

(b) If a product is found in commercial trade after the discontinuation period, the department shall require that the registrant register the product as outlined in Section 4-14-103.

(c) If a product is suspended or canceled by the EPA, the product shall be removed as quickly as reasonably possible from sale in Utah.

(9) The department may exempt, in its sole discretion, any pesticide that is determined either:

- (a) to be adequately regulated by a federal agency; or
- (b) to be of a character that is not subject to FIFRA.

(10) A registrant who desires to register a pesticide to meet special local needs pursuant to FIFRA Section 24(c) shall comply with Section 4-14-103.

(11) No registration is required for a pesticide distributed in Utah pursuant to an experimental use permit issued by the EPA or under Section 4-14-105.

(12) A registration fee determined by the department, pursuant to Subsection 4-2-103(2), shall be paid annually for each product.

(13) Each registration is renewed for a period of one year upon payment of the annual renewal fee determined by the department, pursuant to Subsection 4-2-103(2). The renewal fee shall be paid on or before June 30 of each year. If the renewal of a pesticide registration is not received before July 1 of each year, an additional fee determined by the department, pursuant to Subsection 4-2-103(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 will be issued.

R68-7-4. Product Labeling.

(1) Each container of pesticide distributed in Utah shall bear a label showing the information set forth in Section 4-14-104.

(2) Each pesticide label shall contain the statements, words, graphic material, and any other information required by the EPA in 40 CFR 156.

R68-7-5. Classification of Pesticides.

(1) The department shall classify each pesticide product registered in Utah for either restricted use or general use according to standards consistent with FIFRA Section 3.

(2) The department may also classify other substances as pesticides or restrict the use of any substance as a pesticide if the department determines, in its sole discretion, that such a substance may pose a risk to the health or safety of the public or the environment.

(3) Restricted use pesticides shall not be used by any person that does not have a valid pesticide applicator license with the appropriate category for its use, except they may be used by:

(a) a pesticide handler, supervised by a certified pesticide applicator under the EPA WPS and who meets the qualifications in Subsection R68-7-6(6); or

(b) a pesticide handler acting upon an Emergency Use Permit issued under this rule.

R68-7-6. Certification of Pesticide Applicators.

(1) A pesticide applicator shall be certified by the department as a commercial pesticide applicator, non-commercial pesticide applicator, or a private pesticide applicator.

(2) A pesticide applicator shall comply with FIFRA and Title 4, Chapter 14, Utah Pesticide Control Act.

(3) A pesticide applicator shall follow the directions on a pesticide product label.

(4) A pesticide applicator shall be at least 18 years of age.

(5) A certified pesticide applicator may use restricted use, general use, or any other classification of pesticide, including FIFRA Section 25(b) products.

(6) A person who is at least 16 years of age may apply restricted use pesticides while under the direct supervision of a certified pesticide applicator, who is also an immediate family

member, according to the family exemption of the EPA WPS, if they only apply pesticides on the privately owned agricultural establishment of a certified pesticide applicator who is also an immediate family member.

(7) An EPA WPS trainer is a certified pesticide applicator of any type who trains workers and handlers in the WPS requirements under 40 CFR 170.

(8) An EPA WPS trainer may also be a graduate of an EPA approved WPS Train the Trainer Program, as set forth in 40 CFR 170.

(9) Commercial and non-commercial EPA WPS trainers shall have the Agricultural Pest Control: Plant pesticide category on their license, pursuant to Subsection R68-7-7(1)(a).

R68-7-7. Pesticide Certification Categories.

Pesticide applicators shall be certified by the department in one or more of the pest control categories defined in this section:

(1) Agricultural Pest Control.

(a) Plant. This category includes applicators applying pesticides to control pests in the production of agricultural crops including field crops, vegetables, fruits, pasture, rangelands, and non-crop agricultural lands.

(b) Animal. This category includes applicators applying pesticides on animals including 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 applying pesticides for hire, publicly representing themselves as pesticide applicators, or engaged in the use of pesticides, are included in this category.

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

(3) Ornamental and Turf Pest Control. This category includes applicators applying 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 applying pesticides on seeds in seed treatment facilities.

(5) Aquatic Pest Control.

(a) Surface Water. This category includes applicators applying pesticides to control pests in standing or running water. This pesticide category does not include applicators engaged in public health related activities included in Subsection R68-7-7(8).

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

(6) Right-of-Way Pest Control. This category includes applicators applying 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 includes applicators applying pesticides in, on, or around any public or private food handling establishment; dwelling, educational institution, or medical institution; industrial building; business establishment; packing house; food-processing facility; prison; manufacturing facility; grain elevator; or any other structure or area, or immediately adjacent structure or area, to control pests. This category excludes any pesticide applications included in Subsection R68-7-7(13) Fumigation Pest Control and Subsection R68-7-7(15) Wood Destroying Organisms Pest Control. This category includes

applicators applying pesticides on vertebrate pests in buildings and structures, and immediately adjacent to, or no further than three feet from, buildings and structures. If the label for a structural pesticide permits the use of the pesticide more than three feet from the structure, then the pesticide may be used beyond three feet from the structure, but may not exceed the maximum distance permitted by the label.

(8) Public Health Pest Control.

(a) Commercial. This category is limited to commercial pesticide applicators who apply pesticides for the management and control of pests due to issues of medical and public health importance. This category is only valid when the pesticide applicator is actively contracted by a government entity, and is actively engaged in applying pesticides for that government entity.

(b) Non-Commercial. This category is limited to state and federal employees, county or city governments, or persons under their direct supervision, who apply pesticides in government-sponsored public health programs for the management and control of pests due to issues of medical and public health importance.

(9) Regulatory Pest Control. This category is limited to state and federal employees who:

(a) apply pesticides in a mechanical ejection device; or

(b) apply pesticides in a protective collar or other method to control regulated pests.

(10) Demonstration, Consultation, and Research Pest Control. This category includes applicators who demonstrate or provide instruction to the public in the proper use, techniques, benefits, and methods of applying restricted use pesticides. This category includes agricultural compliance specialists, educational and university personnel, commercial business representatives, consultants and advisors, and persons conducting field research with restricted use pesticides. In addition to certification in this pesticide category, individuals shall also meet specific standards that may be applicable to their particular pesticide category.

(11) Aerial Application Pest Control. This category includes applicators applying pesticides by airplane, drone, helicopter, or any other type of aircraft. Aerial applicators are required to be certified in the Aerial Application Pest Control category, along with any other applicable pest control category for any intended pesticide application. Aerial pesticide applicators shall also possess a valid commercial pilot license, or equivalent remote pilot certifications, issued by the Federal Aviation Administration (FAA).

(12) Vertebrate Animal Pest Control. This category includes applicators applying pesticides for the outdoor control of vertebrate pests, such as rodents, birds, bats, predators, or domestic animal pests. This category excludes any pesticide applications included in Subsection R68-7-7(9) Regulatory Pest Control, and specifically excludes the use of sodium cyanide and sodium fluoroacetate.

(13) Fumigation Pest Control.

(a) Stored Commodities. This category includes applicators applying fumigants to control pests in, on, or around stored grains, grain elevators, mills, structures, railroad cars, manufactured products, or similar areas or items.

(b) Structural. This category includes applicators applying fumigants to control pests while additionally tenting, sealing with filling, or completely enclosing a structure.

(c) Soil. This category includes applicators applying fumigants in and on the soil of agricultural locations.

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

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

R68-7-8. Standards of Competence for Certification of Pesticide Applicators and Pesticide Businesses.

(1) Pesticide applicators shall be at least 18 years of age to obtain a commercial, non-commercial, or private pesticide applicator license.

(2) The basic standards for certification of pesticide applicators have been established by the EPA, and shall be the minimum standards required for certification of pesticide applicators in Utah.

(3) Commercial and non-commercial pesticide applicators shall demonstrate competency and practical knowledge by successfully completing the written pesticide applicator core test and any additional pesticide category tests. The pesticide applicator tests shall include core standards applicable to each pesticide category, and the standards specifically identified for each pesticide category, or subcategory, as set forth in 40 CFR 171.103, and the EPA approved Utah State Pesticide Applicator Certification Plan, including;

(a) familiarity with pesticide labels and labeling and their functions, including each of the following:

- (i) the general format and terminology of pesticide labels and labeling;
- (ii) understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling;
- (iii) understanding that it is a violation of federal law to use any registered pesticide in a manner inconsistent with its labeling;
- (iv) understanding labeling requirements that a certified applicator must be physically present at the site of the application;
- (v) understanding labeling requirements for supervising non-certified applicators working under the direct supervision of a certified applicator;
- (vi) understanding that applicators shall comply with any use restrictions and directions for use contained in pesticide labels and labeling, including being certified in the certification category appropriate to the type and site of the application;
- (vii) understanding the meaning of product classification as either general or restricted use and that a product may be unclassified;
- (viii) understanding and complying with product-specific notification requirements; and
- (ix) recognizing and understanding the difference between mandatory and advisory labeling language;

(b) safety measures to avoid or minimize adverse health effects, including each of the following:

- (i) understanding the different natures of the risks of acute toxicity and chronic toxicity, as well as the long-term effects of pesticides;
- (ii) understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity;

- (iii) recognition of likely ways in which dermal, inhalation, and oral exposure may occur;
- (iv) common types and causes of pesticide mishaps;
- (v) precautions to prevent injury to applicators and other individuals in or near treated areas;
- (vi) need for, and proper use of, protective clothing and personal protective equipment;
- (vii) symptoms of pesticide poisoning;
- (viii) first aid and other procedures to be followed in case of a pesticide mishap; and
- (ix) proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers;
- (c) the potential environmental consequences of the use and misuse of pesticides, including the influence of each of the following:
 - (i) weather and other indoor and outdoor climatic conditions;
 - (ii) types of terrain, soil, or other substrate;
 - (iii) presence of fish, wildlife, and other non-target organisms; and
 - (iv) drainage patterns;
- (d) the proper identification and effective control of pests, including each of the following:
 - (i) the importance of correctly identifying target pests and selecting the proper pesticide product for effective pest control; and
 - (ii) verifying that the labeling does not prohibit the use of the product to control the target pests;
- (e) characteristics of pesticides, including each of the following:
 - (i) types of pesticides;
 - (ii) types of formulations;
 - (iii) compatibility, synergism, persistence, and animal and plant toxicity of the formulations;
 - (iv) hazards and residues associated with use;
 - (v) factors that influence effectiveness or lead to problems such as pesticide resistance;
- and
 - (vi) dilution procedures;
 - (f) application equipment, including each of the following:
 - (i) types of equipment and advantages and limitations of each type; and
 - (ii) use, maintenance, and calibration procedures;
 - (g) selecting appropriate application methods, including each of the following:
 - (i) methods used to apply various forms and formulations of pesticides;
 - (ii) knowledge of which application method to use in a given situation and that use of a fumigant, aerial application, sodium cyanide, or sodium fluoroacetate requires additional certification;
 - (iii) how selection of application method and use of a pesticide may result in proper use, unnecessary or ineffective use, and misuse; and
 - (iv) prevention of drift and pesticide loss into the environment;
 - (h) knowledge of all applicable state, tribal, and federal laws and regulations.; and
 - (i) professionalism, including understanding the importance of each of the following:
 - (i) maintaining chemical security for restricted use pesticides;

(ii) how to communicate information about pesticide exposures and risks with customers and the public; and

(iii) appropriate product stewardship for certified applicators.

(4) The standards for commercial, non-commercial, and private applicators do not apply to the following persons for the purposes of this rule:

(a) persons conducting research involving restricted use pesticides who have received state approval;

(b) doctors of medicine and doctors of veterinary medicine applying pesticides, drugs, or medication during their normal practice, and who do not publicly represent themselves as pesticide applicators;

(c) persons using a general use disinfectant, sanitizer, or deodorizer commercially, and not for the control of insects, weeds, rodents, or similar pests, or use in settings outside of a structure; or

(d) persons using a general use fungicide for interior structural cleaning or interior structural mold remediation.

(5) Aerial Pesticide Applicator. An aerial pesticide applicator shall demonstrate competence and practical knowledge of aerial pest control in a wide variety of environments by successfully completing the aerial pesticide applicator test. Aerial pesticide applicators shall know the significance of drift, and of the potential for non-target injury and environmental contamination. Aerial pesticide applicators shall obtain the Aerial Application Pest Control category certification, along with any additional pesticide category certifications for which they shall apply pesticides. Aerial pesticide applicators shall comply with each standard set forth by the FAA, and shall submit proof of current registration with the FAA as an additional requirement for receiving an aerial pesticide applicator certification.

(6) Private Pesticide Applicator. A private pesticide applicator shall demonstrate competence and practical knowledge by successfully completing the private pesticide applicator test, and any required additional pesticide category tests. This knowledge shall include the basic standards for certification of private applicators set forth in 40 CFR 171.105. This includes:

(a) familiarity with pesticide labels and labeling and their functions, including each of the following:

(i) the general format and terminology of pesticide labels and labeling;

(ii) understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling;

(iii) understanding that it is a violation of federal law to use any registered pesticide in a manner inconsistent with its labeling;

(iv) understanding when a certified applicator shall be physically present at the site of the application based on labeling requirements;

(v) understanding labeling requirements for supervising non-certified applicators working under the direct supervision of a certified applicator;

(vi) understanding that applicators shall comply with each use restriction and directions for use contained in pesticide labels and labeling, including being certified in the appropriate category to use restricted use pesticides for fumigation or aerial application, or predator control devices containing sodium cyanide or sodium fluoroacetate, if applicable;

(vii) understanding the meaning of product classification as either general or restricted use, and that a product may be unclassified;

(viii) understanding and complying with product-specific notification requirements; and

- (ix) recognizing and understanding the difference between mandatory and advisory labeling language;
- (b) safety measures to avoid or minimize adverse health effects, including each of the following:
 - (i) understanding the different natures of the risks of acute toxicity and chronic toxicity, as well as the long-term effects of pesticides;
 - (ii) understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity;
 - (iii) recognition of likely ways in which dermal, inhalation, and oral exposure may occur;
 - (iv) common types and causes of pesticide mishaps;
 - (v) precautions to prevent injury to applicators and other individuals in or near treated areas;
 - (vi) need for, and proper use of, protective clothing and personal protective equipment;
 - (vii) symptoms of pesticide poisoning;
 - (viii) first aid and other procedures to be followed in case of a pesticide mishap; and
 - (ix) proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers;
- (c) the potential environmental consequences of the use and misuse of pesticides, including the influence of the following:
 - (i) weather and other climatic conditions;
 - (ii) types of terrain, soil, or other substrate;
 - (iii) presence of fish, wildlife, and other non-target organisms; and
 - (iv) drainage patterns;
- (d) the proper identification and effective control of pests, including each of the following:
 - (i) the importance of correctly identifying target pests and selecting the proper pesticide product; and
 - (ii) verifying that the labeling does not prohibit the use of the product to control the target pests;
- (e) characteristics of pesticides, including the following:
 - (i) types of pesticides;
 - (ii) types of formulations;
 - (iii) compatibility, synergism, persistence, and animal and plant toxicity of the formulations;
 - (iv) hazards and residues associated with use;
 - (v) factors that influence effectiveness or lead to problems such as pesticide resistance;
- and
 - (vi) dilution procedures;
 - (f) application equipment, including each of the following:
 - (i) types of equipment and advantages and limitations of each type; and
 - (ii) uses, maintenance, and calibration procedures;
 - (g) selecting appropriate application methods, including each of the following:
 - (i) methods used to apply various forms and formulations of pesticides;

- (ii) knowledge of which application method to use in a given situation and that use of a fumigant, aerial application, or predator control device containing sodium cyanide or sodium fluoroacetate requires additional certification;
- (iii) how selection of application method and use of a pesticide may result in proper use, unnecessary or ineffective use, and misuse; and
- (iv) prevention of drift and pesticide loss into the environment;
- (h) knowledge of each applicable state, tribal, and federal laws and regulations, including understanding the WPS and the circumstances where compliance is required;
- (i) certified applicator responsibilities related to supervision of non-certified applicators, including each of the following:
 - (i) understanding and complying with requirements in 40 CFR 171.201 and 40 CFR 171.501 for private applicators who supervise non-certified applicators using restricted use pesticides;
 - (ii) providing use-specific instructions to non-certified applicators using restricted use pesticides under the direct supervision of a certified applicator; and
 - (iii) explaining appropriate state, tribal, and federal laws and regulations to non-certified applicators working under the direct supervision of a certified applicator;
 - (j) understanding stewardship and the importance of each of the following:
 - (i) maintaining chemical security for restricted use pesticides; and
 - (ii) how to communicate information about pesticide exposures and risks with agricultural workers and handlers and other persons;
 - (k) practical knowledge of pest control applications to agricultural commodities including each of the following:
 - (i) specific pests of relevant agricultural commodities;
 - (ii) how to avoid contamination of ground and surface waters;
 - (iii) understanding pre-harvest and restricted entry intervals and entry-restricted periods and areas;
 - (iv) understanding specific pesticide toxicity and residue potential when pesticides are applied to animal or animal product agricultural commodities; and
 - (v) relative hazards associated with using pesticides on animals or places in which animals are confined based on formulation, application technique, age of animal, stress, and extent of treatment.
- (7) A private pesticide applicator that functions in a supervisory role shall be responsible for the actions of any non-certified pesticide handlers under their instruction and control.
- (8) A private pesticide applicator shall provide non-certified pesticide handlers under their supervision instructions on the EPA WPS pesticide handler applicator training, including 40 CFR 171.201 and 40 CFR 170.501, and keep records of having provided these instructions for a period of two years.
- (9) A private pesticide applicator shall be physically present to supervise the application of any pesticide by a non-certified handler, if such presence is required by the label of the pesticide being applied.

R68-7-9. Commercial Pesticide Applicator Licensing and Certification Procedures.

- (1) Commercial Pesticide Applicator and Commercial Pesticide Business License Required.

(a) Each person performing the physical act of applying a pesticide, shall be certified by the department and have a valid license issued by the department. 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 land or property of another at any time without becoming certified as a pesticide applicator, obtaining a commercial pesticide applicator license, and:

(i) obtaining a commercial pesticide business license, as described in Section 4-14-111 issued by the department; or

(ii) working for a company that has already obtained a commercial pesticide business license.

(b) The fees for a commercial pesticide applicator license and a commercial pesticide business license, shall be determined in accordance with Subsection 4-2-103(2) and Section 63J-1-504.

(c) A commercial pesticide applicator license is required for any individual who applies pesticides for a commercial business. No person shall purchase, use, or demonstrate the use of, any restricted use pesticide, or shall apply any pesticide for a commercial business, without becoming certified and obtaining a commercial pesticide applicator license issued by the department.

(2) An applicant for a commercial pesticide applicator license shall:

(a) complete an application on the department's website or on forms prepared and provided by the department;

(b) pay the licensing fees; and

(c) a license will only be issued after the applicant has successfully passed the required pesticide applicator tests to become certified, or after recertifying according to the Continuing Education Unit (CEU) requirements.

(3) A testing fee, retest fee, or any related fee, may be determined by department approved testing centers, according to their own individual policies.

(4) An applicant for a commercial pesticide business license shall:

(a) complete an application form provided by the department;

(b) pay the licensing fee;

(c) be in good standing with the department;

(d) demonstrate good character; and

(e) provide evidence that the owner or qualifying party:

(i) is a certified pesticide applicator in Utah;

(ii) is not a designated qualifying party or employee with any other pesticide applicator business;

(iii) has been a certified pesticide applicator for at least two years out of the ten years immediately before the date of the commercial pesticide business application; or

(iv) holds an associate degree, or higher, in horticulture, agricultural sciences, biological sciences, pest management, or a related and relevant science degree.

(f) A person applying for a commercial pesticide business license may be exempted from the two year certification requirement if the individual's and entity's sole use of pesticides is limited to:

(i) providing ornamental and turf herbicide spot treatment services as part of a lawn maintenance service; and

(ii) using herbicides with labels that contain the signal word "caution" or "warning."

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

(h) A commercial pesticide business with a single business identity or name, but operating from more than one business location, shall be licensed at each separate business location. Business locations that are used only for pesticide storage and mixing purposes are exempt from licensing requirements, but shall be disclosed to the department.

(i) The department may require a commercial pesticide business license applicant to change their requested business name. This may occur if the applicant requests a business name that is the same, or closely resembles, the name of a currently licensed commercial pesticide business. The department may additionally require a commercial pesticide business, or commercial pesticide business license applicant, to change their business name if the business name could reasonably cause public confusion, public alarm, or public offense. Any determination made pursuant to this subsection shall be at the sole discretion of the department in coordination with the state Division of Corporations. The purpose of this subsection is to ensure compliance with current guidance from the Division of Corporations. The department shall prioritize licensing a business name that is registered with the Division of Corporations.

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

(k) A franchised commercial pesticide business licensee shall have a separate commercial pesticide business license and a separate certified commercial pesticide applicator at each business location. Additionally, franchised businesses shall be distinctly identifiable from one another, to avoid departmental and public confusion, by adding unique words or numbers to distinguish the different businesses.

(l) If a commercial pesticide business licensee uses a Doing Business As (DBA) name, it shall be listed on the pesticide business application along with the company name. A business may list more than one assumed name on a single registration application. Any DBA shall be registered and active with the Division of Corporations.

R68-7-10. Commercial Pesticide Applicator and Commercial Pesticide Business Testing Procedures.

(1) Commercial Pesticide Applicator Testing. To become certified, an applicant for a commercial pesticide applicator license shall demonstrate competency and knowledge of pesticide applications, laws, and other relevant subjects by successfully completing the required pesticide applicator tests and department application forms. Each pesticide applicator test shall be proctored at a department approved testing center.

(a) An applicant shall first pay any licensing fees to the department, and obtain a receipt of license payment.

(b) An applicant shall find a testing center from a list of approved testing centers on the department's website.

(c) An applicant shall schedule each required pesticide applicator test with a testing center.

(d) Fees for testing may be established and charged by the testing center, including those operated by the department.

(e) An applicant may acquire study materials from the department website or purchase them from a separate vendor.

(f) An applicant shall present their receipt of license payment from the department, and valid government issued identification, to the proctor at the applicant's chosen testing center.

(g) Cheating, ejection from testing, or failure to follow the rules of the department or testing center shall, at the discretion of the department, constitute a violation of this rule and may serve as a basis for a denial of a license application. Applicants are subject to state and federal law and department rules and policies regardless of whether the applicant successfully passes or not.

(h) The pesticide applicator core test must be successfully completed with a minimum score of 70% before any pesticide category tests may be attempted.

(i) At least one pesticide category test shall be taken and successfully completed with a minimum score of 70% before a license may be obtained.

(j) The steps to recertify solely by testing are the same as for an initial applicant. The pesticide applicator core test must be successfully completed with a minimum score of 70% before any pesticide category tests may be attempted.

(k) Upon the successful completion of the appropriate pesticide applicator tests, the applicant shall complete the department's completion form, which can be found online in the testing program.

(l) When the completion form has been submitted, a license may be issued.

(m) The rules of a testing center, if more restrictive than those of the department, shall take precedence over those of the department during the administration of pesticide applicator tests.

(n) If the minimum score of 70% is not obtained after two attempts, the person taking the tests shall wait at least 24 hours, pay any additional retest fees to the testing center, and begin retesting on any failed tests.

(2) Commercial Pesticide Business Testing. The test shall be taken by the owner, principal agent, manager, or designated qualifying party, and that individual shall be bound by the rules for a commercial pesticide business contained in Subsection R68-7-10(1).

(a) Business license tests may be taken on any computer with internet access.

(b) In the event the individual taking the test does not successfully pass the test with a minimum score of 70%, a commercial pesticide business license shall not be issued.

R68-7-11. Commercial Pesticide Applicator and Commercial Pesticide Business License Issuance.

(1) A temporary pesticide applicator permit shall be issued automatically by email following the successful completion of the pesticide applicator core test in conjunction with each pesticide category test and provided each other department requirement is met. The temporary permit will expire 30 days from the date it was issued. The pesticide applicator core test must be successfully completed with a minimum score of 70% before any pesticide category tests may be attempted. A temporary pesticide applicator permit is invalid if only the pesticide applicator core test is successfully completed and no additional pesticide category test is successfully completed.

(2) The pesticide applicator and pesticide business is responsible for verifying that their license has been processed by the department.

(3) A commercial pesticide applicator license or a commercial pesticide business license shall be issued when the following conditions have been met:

- (a) the applicant has submitted an application form to the department;
- (b) any required fees have been paid;
- (c) the applicant is in good standing with the department;
- (d) the applicant has successfully passed the appropriate tests to apply pesticides in the classifications and categories for which they have applied; and
- (e) the applicant for the qualifying party for the pesticide business license meets the requirements in Section 4-14-111.

(4) A commercial pesticide applicator license shall expire on December 31 of the third calendar year from the time of licensure, unless it has been revoked or suspended by the department for cause, which may include any combination of the unlawful acts listed in Section R68-7-20.

(5) If an application for a commercial pesticide applicator license or commercial pesticide business license is denied, the applicant shall be informed of the reason by email or mail.

(6) A pesticide applicator shall have their license in their immediate possession when making a pesticide application.

(7) If a pesticide applicator requests a duplicate license from the department, a fee determined by the department, pursuant to Subsection 4-2-103(2), shall be paid. The pesticide applicator must be in good standing, having no unresolved violations or fines, before a replacement license shall be issued.

(8) A commercial pesticide business license shall be required for each commercial pesticide business location, other than locations used only to store and load pesticides.

(9) A new commercial pesticide applicator or commercial pesticide business license applicant who completes an application completed between November 1 and December 31 shall be licensed for the remainder of that year and the following three calendar years.

(10) Commercial Pesticide Applicator and Commercial Pesticide Business License Recertification and Renewal.

(a) Each commercial pesticide applicator and commercial pesticide business license shall expire on December 31 of the third calendar year following its issuance.

(b) Commercial pesticide applicators shall recertify before their license expires, and may be subject to re-examination at any time during their valid license period.

(c) Recertification options include:

(i) completion of the original certification process by taking the required pesticide core and pesticide category tests and successfully completing each required test with a minimum score of 70%; or

(ii) participation in approved CEUs and accumulating the required amount of 24 total CEU credits during the licensure period. A minimum of two credits in law, six in safety, and ten in pesticide use are required, while any combination of the three categories may be used for the remaining six credits.

(d) The qualifying party for a commercial pesticide business shall complete the related commercial pesticide business test every three years.

(11) Records Maintained. Commercial applicators shall keep and maintain records of any pesticide applications.

- (a) These records shall be recorded within 24 hours after the pesticide application is made.
- (b) The application records shall include the following information:
- (i) the name and address of the person or entity for whom the pesticide is applied;
 - (ii) the address of the pesticide application location, if the pesticide application location differs from Subsection R68-7-11(11)(a)(i) ;
 - (iii) the total square footage or total size of the area to be treated with pesticides;
 - (iv) a description of the specific target sites, crops, commodities, or stored products at the pesticide application location to which any pesticides are applied;
 - (v) the time and date, including the month, day, and year when the pesticide was applied;
 - (vi) the brand name of the pesticides, EPA registration number, and mix rate for any pesticides applied;
 - (vii) the total amount of pesticides, including diluted or ready-to-use (RTU) pesticides, applied per location and per application;
 - (viii) the purpose of the pesticide application, the pesticide target site, and pest to be treated;
 - (ix) the name, commercial pesticide business address, and commercial pesticide applicator license number of the certified commercial pesticide applicator who applied the pesticides; and

(c) Records shall be kept for a period of at least two years from the date of the pesticide application and shall be available for inspection by the department upon request.

(d) Records shall be furnished in a uniform format.

(12) Notwithstanding the requirements of this section, the department may give consideration to political subdivisions of the state, or a non-profit organization, regarding their need to obtain a commercial pesticide business license or the requirement of their applicators to obtain a commercial pesticide applicator license.

(a) Consideration shall be given to political subdivisions if their charter includes a fee for pesticide services or products.

(b) Non-profit organizations may not need to obtain the commercial pesticide business license or the commercial pesticide applicator license to receive reimbursement for applications made on public land owned by the federal government or the state.

(c) Application or distribution of restricted use pesticides shall be done in accordance with this rule.

R68-7-12. Non-Commercial Pesticide Applicators.

(1) Non-Commercial Pesticide Applicator License Required.

(a) A non-commercial pesticide applicator license is required for applying restricted use pesticides for a city, county, state, or federal government entity, or for corporations, businesses, or any other entity that does not require a commercial pesticide applicator license.

(b) No person shall purchase, use, or demonstrate the use of any restricted use pesticide without becoming certified and obtaining a non-commercial pesticide applicator license issued by the department.

(c) Each person performing the physical act of applying restricted use pesticides shall be certified and have a valid non-commercial pesticide applicator license.

(2) Non-Commercial Pesticide Applicator Application and Fee Requirements. The fees for a non-commercial pesticide applicator license shall be determined in accordance with Subsection 4-2-103(2) and Section 63J-1-504.

(a) An application for a non-commercial pesticide applicator license shall be made on the approved department form.

(b) A non-commercial pesticide applicator license shall only be issued after the applicant has successfully passed the required pesticide applicator tests, or after recertifying according to CEU requirements.

(c) Each individual performing the physical act of applying restricted use pesticides shall be licensed as a non-commercial pesticide applicator.

(d) A testing fee, retest fee, or any related fee, may be determined by approved testing centers, according to their own individual policies.

(3) Non-Commercial Pesticide Applicator Initial Certification.

(a) Fees for testing may be established and charged by any testing center, including those operated by the department.

(b) The applicant may acquire any necessary study materials from the department website.

(c) The applicant should schedule required pesticide applicator tests with a testing center approved by the department.

(4) Non-Commercial Pesticide Applicator Testing Procedures.

(a) A new applicant for a non-commercial pesticide license shall demonstrate competency and knowledge of pesticide applications, laws, and other relevant subjects by successfully completing the approved pesticide applicator tests and department application forms. Pesticide applicator tests shall be proctored at approved testing centers.

(b) An applicant for a non-commercial pesticide applicator license shall first pay licensing fees to the department, and obtain a receipt of license payment.

(c) An applicant for a non-commercial pesticide applicator license shall find a testing center from a list of approved testing centers on the department's website.

(d) An applicant for a non-commercial pesticide applicator license shall present their receipt of license payment from the department, and valid government issued identification, to the proctor at the applicant's chosen testing center.

(e) Cheating, ejection from testing, or failure to follow the rules of the department or testing center shall, at the discretion of the department, constitute fraud under these rules. Applicants are subject to this rule, regardless of whether the applicant successfully passes or not.

(f) The pesticide applicator core test must be successfully completed with a minimum score of 70%, before any pesticide category tests may be attempted.

(g) At least one pesticide category test must be taken and successfully completed with a minimum score of 70% before a non-commercial pesticide applicator license may be obtained.

(h) The steps to recertify solely by testing are the same as for an initial applicant. The pesticide applicator core test must be successfully completed with a minimum score of 70%, before any pesticide category tests may be attempted.

(i) Upon the successful completion of the appropriate pesticide applicator tests, the applicant shall complete the department's completion form, which can be found online in the testing program.

(j) The rules of a testing center, if more restricting than those of the department, shall take precedence over those of the department during the administration of the pesticide applicator tests.

(k) If the minimum score of 70% is not obtained after two attempts, the person taking the tests must wait 24 hours, pay any additional retest fees to the testing center, and begin retesting on any failed tests.

(5) Non-Commercial Pesticide Applicator Certification Tests and Review. The pesticide applicator tests and methods of testing shall be determined and approved by the department. The review of applications shall be made by the department for determining eligibility.

(6) Non-Commercial Pesticide Applicator License Issuance.

(a) A temporary pesticide applicator permit shall be issued automatically by email for the successful completion of the pesticide applicator core test and each pesticide category test and provided each other department requirement is met. The temporary permit will expire 30 days from the date it was issued. The pesticide applicator core test must be successfully completed with a minimum score of 70%, before any pesticide category tests may be attempted. A temporary pesticide applicator permit is not valid if only the pesticide applicator core test is successfully completed, and no additional pesticide category test is successfully completed.

(b) The pesticide applicator is responsible to verify their license is processed by the department.

(c) A non-commercial pesticide applicator license shall be issued when the following conditions have been met:

(i) an application form has been submitted to the department;

(ii) any fees have been paid;

(iii) the applicant is in good standing with the department; and

(iv) the applicant has successfully passed the appropriate tests to apply pesticides in the classifications for which they have applied

(d) The non-commercial pesticide applicator license shall expire on December 31 of the third calendar year from the time of licensure, unless it has been revoked or suspended by the department for cause, which may include any combination of the unlawful acts given in Section R68-7-20.

(e) If an application for a non-commercial pesticide applicator license is denied, the applicant shall be informed of the reason by email or mail.

(f) A pesticide applicator shall have their license in their immediate possession when making a pesticide application.

(g) If the pesticide applicator requests a duplicate license from the department, a fee determined by the department, pursuant to Subsection 4-2-103(2), shall be paid. The pesticide applicator must also be in good standing, having no unresolved violations or fines, before a replacement license shall be issued.

(h) A new non-commercial pesticide applicator application completed between November 1 and December 31 of the same year shall be licensed for the remainder of that year and the following three calendar years.

(7) Non-Commercial Pesticide Applicator License Recertification and Renewal.

(a) Each non-commercial pesticide applicator license shall expire on December 31 of the third calendar year following its issuance.

(b) Non-Commercial pesticide applicators must recertify before their license expires, and may be subject to re-examination at any time during their valid license period.

(c) Recertification options include:

(i) completion of the original certification process by taking the required pesticide core and pesticide category test and successfully completing each required test with a minimum score of 70%; or

(ii) participate in approved CEUs and accumulate the required amount of 24 total CEU credits during the valid license time period. A minimum of two credits in law, six in safety, and ten in pesticide use are required, while any combination of the three categories may be used for the remaining six credits.

(8) Records Maintained. Non-Commercial applicators shall keep and maintain records of any restricted use pesticide applications.

(a) These records shall be recorded within 24 hours after the pesticide application is made.

(b) The application records shall include the following information:

(i) the name and address of the person for whom the restricted use pesticide is applied;

(ii) the address of the restricted use pesticide application location, if the pesticide application location differs from the location provided pursuant to Subsection R68-7-12(8)(b)(i);

(iii) the complete square footage of the area to be treated with restricted use pesticides;

(iv) the specific sites at the pesticide application location to which any restricted use pesticides are applied;

(v) the time and date, including the month, day, and year when the restricted use pesticide was applied;

(vi) the brand name of the restricted use pesticides, EPA registration number, and mix rate for any restricted use pesticides applied;

(vii) the total amount of restricted use pesticides, including diluted or ready-to-use (RTU) pesticides, applied per application;

(viii) the purpose of the restricted use pesticide application, the pesticide target site, and pest to be treated; and

(ix) the name and non-commercial pesticide applicator license number of the certified non-commercial pesticide applicator who applied the pesticides.

(c) Records shall be kept for a period of at least two years from the date of the pesticide application and shall be available for inspection by the department, upon request.

(d) Records shall be furnished in a uniform format.

R68-7-13. Private Pesticide Applicators.

(1) Private Pesticide Applicator License Required.

(a) A private pesticide applicator license is required for applying restricted use pesticides on the owned, rented, or leased agricultural property of an individual. No person shall purchase, use, demonstrate the use of, or supervise the use of any restricted use pesticide without becoming certified and obtaining a private pesticide applicator license issued by the department. Each person performing the physical act of applying restricted use pesticides shall be 18 years of age, or older, and possess a valid private pesticide applicator license, except:

(i) a person of at least 16 years of age may apply restricted use pesticides while under the direct supervision of a certified pesticide applicator, who is also an immediate family member, according to the family exemption of the EPA WPS, and only applies pesticides on the privately owned agricultural establishment of a certified pesticide applicator who is also an immediate family member; or

(ii) any person, 18 years of age, or older, employed by, or working on, a privately owned, rented, or leased agricultural property who has been trained by an actively certified Utah pesticide applicator, or trainer that has successfully completed an EPA approved Train the Trainer course, and has been instructed on the requirements of the EPA WPS for pesticide handlers.

(b) A private pesticide applicator is considered as having each of the agricultural-related pesticide categories on their license, specifically; Agricultural Pest Control: Plant, Agricultural Pest Control: Animal, Forest Pest Control, Ornamental and Turf Pest Control, Aquatic Pest Control: Surface Water, Structural and Health Related Pest Control, and Vertebrate Pest Control. A private pesticide applicator shall successfully complete the respective pesticide applicator tests for any additional pesticide categories before applying any pesticides restricted by those categories.

(c) Issuance of a private pesticide applicator license shall be conditioned upon the applicant complying with the certification requirements determined by the department as necessary to prevent unreasonable adverse effects on the environment, and to prevent unreasonable injury to any person. A private pesticide applicator license certifies the applicator to give instructions on the EPA WPS to the workers and pesticide handlers of a private agricultural establishment.

(d) Private Pesticide Applicator Application and Fee Requirements. The fees for a private pesticide applicator license shall be determined in accordance with Subsection 4-2-103(2) and Section 63J-1-504.

(i) Applications for a private pesticide applicator license shall be made on the approved department form and shall be submitted to the department along with the required fee. A license will only be issued after the applicant has successfully passed the required pesticide applicator tests, or after recertifying according to the CEU requirements.

(ii) A testing fee, retest fee, or any related fee, may be determined by approved testing centers, according to their own individual policies.

(2) Private Pesticide Applicator Initial Certification.

(a) Fees for testing may be established and charged by any testing center, including those operated by the department.

(b) The applicant may acquire any necessary study materials from the department website.

(c) The applicant shall schedule required pesticide applicator tests with a testing center approved by the department.

(3) Private Pesticide Applicator Testing Procedures.

(a) A new applicant for a private pesticide license must be 18 years of age, or older, and shall demonstrate competency and knowledge of pesticide applications, laws, and other relevant subjects by successfully completing the approved private pesticide applicator test and department application forms. Each pesticide applicator test shall be proctored at an approved testing center.

(b) An applicant for a private pesticide applicator license shall first pay any licensing fees to the department, and obtain a receipt of license payment.

(c) An applicant for a private pesticide applicator license shall find a testing center from a list of approved testing centers on the department's website. A test may also be proctored by a local Utah State University Extension agent.

(d) An applicant for a private pesticide applicator license shall present their receipt of license payment from the department, and valid government issued identification, to the proctor at the applicant's chosen testing center.

(e) Cheating, ejection from testing, or failure to follow the rules of the department or testing center shall, at the discretion of the department, constitute fraud under this rule. Applicants are subject to this rule, regardless of whether the applicant successfully passes or not.

(f) The private pesticide applicator test must be successfully completed with a minimum score of 70%, before any additional pesticide category tests may be attempted.

(g) The private pesticide applicator test must be taken and successfully completed with a minimum score of 70% before a private pesticide applicator license may be obtained.

(h) Upon the successful completion of the appropriate pesticide applicator tests, the applicant shall complete the department's completion form, which can be found online in the testing program.

(i) The steps to recertify solely by testing are the same as for an initial applicant. The private pesticide applicator test must be successfully completed with a minimum score of 70%, before any additional pesticide category tests may be attempted.

(j) Upon the successful completion of the private pesticide applicator test, the applicant shall complete the department's completion form, and the department's pesticide applicator application form, online.

(k) The rules of a testing center, if more restricting than those of the department, shall take precedence over those of the department during the administration of the pesticide applicator tests.

(l) If the minimum score of 70% is not obtained after two attempts, the person taking the tests must wait 24 hours, pay any additional retest fees to the testing center, and begin retesting on any failed tests.

(4) Private Pesticide Applicator Certification Tests and Review. The pesticide applicator tests and methods of testing shall be determined and approved by the department. The review of applications shall be made by the department for determining eligibility.

(5) Emergency Use Permit. An individual may be able to acquire an Emergency Use Permit which allows a single individual, at a singular location, the permission to apply a restricted use pesticide in a situation determined to be an emergency by the department.

(a) Determination is at the sole discretion of the department.

(b) Any subsequent purchase of any restricted use pesticide, or additional pesticide application of any restricted use pesticide, or use of any restricted use pesticide by the individual obtaining the Emergency Use Permit is not allowed without the written consent of the department.

(c) This permit shall be issued only in an emergency as a substitute for a private pesticide applicator license.

(d) An Emergency Use Permit issued by the department shall be in accordance with 40 CFR 166.

(6) Private Pesticide Applicator License Issuance.

(a) A temporary pesticide applicator permit shall be issued automatically by email for the successful completion of the private pesticide applicator test and each pesticide category test and provided each other department requirement is met. The temporary permit will expire 30 days from the date it was issued. The private pesticide applicator test must be successfully completed with a minimum score of 70%, before any pesticide category tests may be attempted.

(b) The pesticide applicator is responsible to verify their license is approved by the department.

(c) A private pesticide applicator license shall be issued when the following conditions have been met:

(i) the applicant has successfully passed the appropriate tests to apply pesticides in the classifications for which they have applied;

(ii) any fees have been paid; and

(iii) the applicant is in good standing with the department.

(d) The private pesticide applicator license shall expire on December 31 of the third calendar year from the time of licensure, unless it has been revoked or suspended by the department for cause, as set forth in Section R68-7-20.

(e) If an application for a private pesticide applicator license is denied, the applicant shall be informed of the reason by email or mail.

(f) A pesticide applicator shall have their license in their immediate possession when making a pesticide application.

(g) Duplicate licenses from the department are available for a fee as set forth in Subsection 4-2-103(2). The pesticide applicator shall also be in good standing with the department, and have no unresolved violations or fines, before a replacement license may be issued.

(h) A new private pesticide applicator application completed between November 1 and December 31 of the same year shall be licensed for the remainder of that year and the following three calendar years.

(7) Private Pesticide Applicator License Recertification and Renewal.

(a) Each private pesticide applicator license shall expire on December 31 of the third calendar year following its issuance.

(b) Private pesticide applicators shall complete required recertifications before their license expires, and may be subject to re-examination at any time during their valid license period.

(c) Recertification options include:

(i) completion of the original certification process by taking the required pesticide core and pesticide category test and successfully completing each required test with a minimum score of 70%; or

(ii) participation in approved CEUs and accumulate the required amount of six total CEU credits during the valid license time period. A minimum of one credit in Law, one in Safety, and one in pesticide use are required, while any combination of the three categories may be used for the remaining three credits.

(8) Records Maintained. Private pesticide applicators shall keep and maintain records of any restricted use pesticide applications, and of any pesticide applications required by WPS.

(a) These records shall be recorded within 24 hours after the pesticide application is made.

(b) The application records shall include the following information:

(i) If the licensee is subject to WPS, the location of any pesticide applications, detailing the address, the metes and bounds, GPS coordinates, or a map showing the number of applications and the sites treated;

(ii) If the licensee is not subject to the WPS, the location of any restricted use pesticide applications, detailing the address, the metes and bounds, GPS coordinates, or a map showing the number of applications and the sites treated;

(iii) the complete size description of the pesticide application area, using either acres, square footage, section, or other legally descriptive and easily understandable terms common to the industry;

(iv) the specific sites at the pesticide application location to which any restricted use pesticides are applied;

(v) the time and date of the pesticide application, including the month, day, and year when the restricted use pesticide was applied, and the pesticide application start and end times;

(vi) the pesticide product name, as it is written on the pesticide label, of the restricted use pesticides, the EPA registration number, and mix rate for any restricted use pesticides applied;

(vii) the active ingredient of the restricted use pesticide;

(viii) the total amount of restricted use pesticides, including diluted or RTU pesticides, applied per application;

(ix) the amount of restricted use pesticide used per acre or square feet;

(x) the purpose of the restricted use pesticide application, the pesticide target site, the pesticide target pest, and, if applicable, the crop to be treated;

(xi) the duration, or length of time, required for the restricted entry interval;

(xii) the name and pesticide applicator license number of the certified pesticide applicator who applied the pesticides, or who directly supervised the use of any restricted use pesticides; and

(xiii) the name of any individual who applied pesticides under the exemptions provided in Subsection R68-7-13(1)(a)(i) or Subsection R68-7-13(1)(a)(ii).

(c) Records shall be kept for a period of at least two years from the date of the pesticide application and shall be made available for inspection by the department, within 48 hours of a request.

(d) Pesticide application records provided by any commercial pesticide business to the agricultural establishment shall also be kept for two years, and will provide the same information required by Subsection R68-7-13(8).

(e) Records shall be kept recording the maintenance history of pesticide application equipment, any respirator medical information, respirator fit testing, and any other records required by the label of the product used or by EPA WPS.

(f) Records shall be kept in a uniform format.

R68-7-14. Other Individuals.

(1) Employees of Federal Agencies.

(a) Federal government employees requesting to be a pesticide applicator in Utah shall be required to certify as a non-commercial pesticide applicator by successfully passing the written pesticide applicator core test and any applicable pesticide category tests. Federal government employees who possess a valid and current pesticide applicator license from another state may be exempt, and a reciprocal pesticide applicator license may be issued.

(b) Any federal government agency with an EPA approved pesticide applicator certification plan that meets or exceeds the Utah pesticide applicator certification standards may qualify for reciprocal pesticide applicator certification in Utah.

(c) Federal government employees requesting reciprocal licensing status shall apply to the department and confirm that the application is approved before conducting any activities under this rule or Title 4, Chapter 14, Utah Pesticide Control Act.

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

(a) An out-of-state pesticide applicator may apply as a Utah pesticide applicator by taking the applicable Utah pesticide applicator tests in their respective state. Out-of-state proctors shall be approved by the department and the pesticide applicator applicant shall bear the costs involved with out-of-state testing and licensing.

(b) If a pesticide applicator possesses a current and valid pesticide applicator certification from another state, and requests to apply pesticides in Utah, they shall complete the proper application process to the department, including:

- (i) payment of any required fees;
- (ii) a true copy of the applicant's credentials, both front and back, as proof of certification in the applicant's state of residence;
- (iii) a front and back copy of their government issued identification; and
- (iv) a letter of good standing, or other acceptable government documents, from the applicant's state pesticide licensing program, sent directly to the department by the licensing entity, specifically stating the applicant is in good standing and is currently licensed as a pesticide applicator in that state.

(c) The department may, upon review of the applicant's required credentials and other materials, issue a Utah Pesticide Applicator License to the applicant in accordance with the pesticide categories or pesticide use situations for which the applicant is certified in another state, without requiring testing.

(d) Out-of-state pesticide applicators who apply pesticides in Utah shall be subject to Utah law.

(3) Changes to License Information.

(a) Each certified commercial, non-commercial, and private pesticide applicator shall notify the department of any change to the pesticide applicator's name, address, phone number, email address, or change of employer within 30 calendar days of the change. Failure to do so shall be considered a violation of this rule.

(b) Each commercial pesticide business and RUP dealer shall notify the department of any changes including ownership, company name, owner or manager's name, company address, phone number, email address, or any other required information, within 30 calendar days of the change. Failure to do so shall be considered a violation of this rule.

(c) Business licenses are non-transferable, and in the case of a change of business ownership, a new application is required, along with the payment of any associated fees.

(i) The department shall determine if the name on the license may be retained by the new owner.

(ii) The department shall determine the necessary fees for a new license.

(iii) The new owner shall either qualify as the qualifying party or have an employee of the business that qualifies as a qualifying party. The qualifying party for the business must be an employee of the business as defined in Section 4-14-102, and not a contractor or third party. The qualifying party may not be the designated qualifying party, or employee, of another pesticide applicator business.

(d) The designated representative for a pesticide business license applicant shall meet the requirements of this section, including taking any applicable tests.

R68-7-15. Restricted Use Pesticide Dealer Licensing.

Restricted Use Pesticide Dealer License Required.

(1) It is unlawful for any person to act, represent, or advertise themselves as a restricted use pesticide dealer at any time without obtaining a restricted use pesticide dealer license.

(a) A separate license is required for each individual business location in the state where restricted use pesticides are sold or distributed.

(b) Any manufacturer, registrant, or distributor who has no restricted use pesticide dealer business licensed within this state, and who distributes a restricted use pesticide directly into Utah, shall obtain a restricted use pesticide dealer license for their principal out-of-state business location.

(c) Any manufacturer, registrant, or distributor who sells only through, or to, a pesticide dealer, is not required to obtain a restricted use pesticide dealer license.

(2) Restricted Use Pesticide Dealer License Issuance. Applications for a restricted use pesticide dealer license shall be on the approved department form. The fees for a restricted use pesticide dealer license shall be determined in accordance with Subsection 4-2-103(2) and Section 63J-1-504.

(a) The applicant shall certify on the application that the business understands and recognizes the rules concerning the sale of restricted use pesticides and the records that shall be kept and maintained for two years.

(b) The applicant shall take online training before the initial issuance of their license and with every renewal. If a new manager is hired, the manager shall take online training.

(c) If the department finds the applicant qualified to sell or distribute restricted use pesticides, and the applicant has paid any required licensing fees, the department may issue a restricted use pesticide dealer license. The restricted use pesticide dealer license shall expire on December 31 of the third calendar year from the time of licensure, unless it has been revoked or suspended by the department for cause, as set forth in Section R68-7-20.

(3) Restricted Use Pesticide Dealer License Renewal. Renewal fees for a restricted use pesticide dealer license shall be determined in accordance with Subsection 4-2-103(2) and Section 63J-1-504. If a restricted use pesticide dealer fails to complete and submit the necessary renewal forms and certifications to the department before the end of their license expiration date, a late fee may be assessed and added to the renewal fee, in accordance with Subsection 4-2-103(2) and Section 63J-1-504.

(4) Records Maintained. Each licensed restricted use pesticide dealer location shall keep a record of any restricted use pesticide sales. This restricted use pesticide sales record shall be submitted to the department on the department's website, and shall contain the following information:

- (a) the company name of the restricted use pesticide dealer;
- (b) the store or location name of the restricted use pesticide dealer making the sale;
- (c) the complete restricted use pesticide dealer license number;
- (d) the expiration date of the certified pesticide applicator's certification or license;
- (e) the categories in which the pesticide applicator is certified relevant to the pesticides sold;
- (f) the complete date of the sale, including the month, day, and year;
- (g) the first and last name of the individual who made the sale;

(h) the brand name of the restricted use pesticide sold, the complete EPA registration number of the restricted use pesticide, and the quantity sold;

(i) the restricted use pesticide product container size;

(j) the first and last name of the certified pesticide applicator who made the purchase;

(k) the complete pesticide applicator license number of the certified pesticide applicator who made the purchase; and

(l) the complete address and contact information of the certified pesticide applicator who made the purchase, including street name and house number, city, state, zip code, phone number, and email address.

(m) If the individual who purchased the restricted use pesticide was authorized by letter, the authorization letter shall be kept on file for a minimum of two years. The authorization letter shall contain the name, pesticide applicator license number, signature of the pesticide applicator who wrote the authorization letter, and the full name of the individual being authorized to purchase the restricted use pesticide. The authorization letter may only be used once per restricted use pesticide purchase. The restricted use pesticide dealer shall verify the information contained in the authorization letter, and shall verify the identity of the authorized individual by a government issued identification.

(n) If the individual who purchased the restricted use pesticide used a temporary pesticide applicator permit, a copy of the temporary pesticide applicator permit shall be kept on file for a minimum of two years.

(o) Records shall be kept for a period of two years from the date of the restricted use pesticide sale, and shall be made available for inspection by the department. The department, upon request and within two business days, shall be furnished a copy of any sales records completed by the restricted use pesticide dealer.

(5) Submission of Electronic records. On or before July 1 of each year, restricted use pesticide 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.

(6) Exemption. Section R68-7-15 shall not apply to a certified pesticide applicator who sells restricted use pesticides only as an integral part of their commercial pesticide application business services when the pesticides are dispensed only through their equipment used for pesticide application.

(7) Restricted Use Pesticide Dealers Responsible for the Acts of Their Employees. Each restricted use pesticide dealer shall be responsible for the acts of each person under their employ in the solicitation and sale of restricted use pesticides, and any claims and recommendations for the use of restricted use pesticides. A restricted use pesticide dealer license may be subject to denial, suspension, or revocation for any violation of Title 4, Chapter 14, Utah Pesticide Control Act or rules promulgated thereunder, whether committed by the restricted use pesticide dealer or by the dealer's officer, agent, or employee.

R68-7-16. Responsibilities of Pesticide Applicator Businesses and Pesticide Applicators.

(1) Pesticide Applicator Business Duties and Responsibilities.

(a) A pesticide applicator business shall ensure the qualifying party of the business, as described in Section 4-14-111, receives the training the qualifying party requires to comply fully with state law, individual pesticide label restrictions, and any applicable labeling directions.

(b) Evidence of any pesticide training and attendance shall be recorded and kept on file, and shall include the name of the employee, their respective pesticide applicator license number,

the pesticide topics and specific products covered, and the signatures of the trainees and the trainer. The agenda and copies of the pesticide training material shall be retained for two years after the termination of any employee.

(c) It is the business owner's responsibility to verify that each employed pesticide applicator is properly certified in the appropriate pesticide categories.

(d) Each pesticide service vehicle shall carry complete, appropriate, legible, and up-to-date labels for each pesticide applied directly from that pesticide service vehicle.

(i) Original labels are preferred, and it is prohibited to remove any label from any container still containing any pesticide concentrate.

(ii) If any pesticide labels are printed from an internet source, the revision number or date should be verified with the label on the container to ensure the correct version is used.

(iii) Electronic copies of labels are not acceptable.

(2) Responsibilities of the pesticide business and employees.

(a) A pesticide business, their qualifying party, or their pesticide applicator may be held responsible for the acts or omissions of an employee of the pesticide business. It is the responsibility of the pesticide business to properly train, equip, and prepare their employees, and to maintain records of employee training and equipment.

(b) Failure to respond to or fully disclose information pursuant to any requests by the department within two business days, for information relating to the training and equipment of a pesticide business and their employees shall be evidence of a failure to properly train or equip. The pesticide business owner, qualifying party, or designated pesticide business supervisor has the burden of proof by a preponderance of the evidence that the pesticide business, qualifying party, or pesticide business employee has fulfilled the required duties as prescribed by this rule or a written order of the department.

(3) Use of pesticide business name and license number.

(a) A pesticide business shall prominently display the pesticide business license issued by the department at the primary pesticide business office and at each branch office.

(b) In addition to the requirements of Subsection R68-7-16(3)(a), a pesticide business shall prominently display the pesticide business name and corresponding license number, as recorded on the license issued by the department, on:

(i) customer proposals or contracts that include pest management services;

(ii) service records and service notifications; and

(iii) pesticide business service vehicles and trailers used in providing pest management services.

(c) Pesticide business names and corresponding license numbers displayed on a pesticide business service vehicle or trailer used in providing pest management services shall conform to the following:

(i) are 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) are in a color that contrasts with the color of the service vehicle and trailer;

(iii) are prominently displayed on both sides of the service vehicle or trailer;

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

(v) use at least two-inch numbers for the pesticide business license number; and

(vi) use letters and numbers that are weatherproof.

(d) A pesticide business that always uses a pesticide business service vehicle and trailer together shall only mark either the service vehicle or trailer as described in Subsection R68-7-16(3)(c). A pesticide business that uses a vehicle only for sales, solicitations, or solely for inspections, and does not carry a pesticide or pesticide application equipment, and does not otherwise use the vehicle to provide a pest management service, is not required to mark the vehicle as described in Subsection R68-7-16(3)(c).

(e) When complying with Subsection R68-7-16(3)(c), a pesticide business may use a slogan, trade name, or trade mark in addition to the pesticide business name and corresponding license number. When complying with Subsection R68-7-16(3)(c), a pesticide business may use a word or phrase to indicate its formerly licensed pesticide business name, if it had a formerly licensed pesticide business name.

(4) Pesticide Application Notification.

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

(i) the pesticide business name, pesticide business license number, and telephone number;

(ii) the name and pesticide applicator license number of the licensed pesticide applicator who will make the application;

(iii) the date and time of the pesticide application;

(iv) the type of pesticide application service and brand name and EPA registration number of pesticides applied; and

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

(b) The written statement required in Subsection R68-7-16(4)(a) shall be provided to the customer by any of the following means:

(i) leave statement at the residence;

(ii) in the case of a multi-unit residence, leave the statement with the property manager or their authorized representative; or

(iii) mail to the property manager or their authorized representative if management is located at a location other than the pesticide application site, at least seven calendar days before the date of the pesticide application.

R68-7-17. Termiticide Record Keeping: Additional Requirements.

(1) In addition to the recordkeeping requirements contained in Sections R68-7-11 and R68-7-12, any pesticide applicator shall retain a record of a diagram of the structure treated for termites with termiticide that includes the dimensions of the structure, including the depth to the footer that the foundation rests upon.

(2) For post construction pesticide treatments, the diagram shall also illustrate the area where termites or termite activity was found.

(3) Any records of pesticide applications shall be maintained for a period of two years and organized separately for each individual structure.

(4) If a termiticide distribution system is used:

(a) the system shall meet the standards listed on the label and the use of the system shall be allowed only as stated on the label; and

(b) installation, design, and manufacture of the system shall be allowed by the termiticide label and manufacturer. If no mention of a system is on the label, a distribution application system shall not be used.

R68-7-18. Minimum Standards for Fumigant Applications.

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

(a) at least two persons present at the time of releasing the fumigant and during the initial ventilation, one of whom shall be a certified pesticide applicator with 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 other person;

(b) notification of local fire department or first responder before fumigation of any building or enclosed space, other than a fumigating vault, the with the address of the fumigation job, time of gas release, kind of gas to be used, and the beginning time of the aeration of the premises.

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

(d) Inspection of premises before releasing fumigant. Immediately before releasing the fumigant, the certified pesticide applicator shall conduct a thorough inspection of the premises to verify that no person or non-target animals remain, and that effective precautions have been taken to safeguard occupants of neighboring buildings as set forth in Subsection R68-7-18(1)(e).

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

(i) Fumigation of apartments within a multiple unit apartment building may be fumigated only after the apartments are vacated and the area to be fumigated is properly sealed.

(ii) The adjacent units shall be properly ventilated during the entire exposure period.

(f) Notification of dwellings or places of business within 100 feet of the building being fumigated.

(i) Dwellings or places of business within 100 feet of the building being fumigated shall be notified in writing in advance of the fumigation.

(ii) Premises within 10 feet shall be vacated during the fumigation and aeration periods.

(g) Warning signs.

(i) Warning signs shall be posted conspicuously at entrances of the premises to be fumigated and at the entrances of adjacent multiple units and structures within ten feet and kept there during the entire fumigation and ventilation period. Signs shall be in a bright and conspicuous color with a minimum size of 8 1/2 inches by 11 inches, bearing the word "poison," displaying the skull and crossbones, the name of the fumigant used, and the name, address, and telephone number of the certified pesticide applicator.

(ii) Before the fumigant is released, entrances leading directly to the fumigated space shall be closed, sealed, and locked, except exits to be used by the fumigating crew. These exits shall be closed, sealed, and locked promptly after the fumigant has been released.

(h) Masks worn.

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

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

(i) Re-entering fumigated premises.

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

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

(j) Subsections R68-7-18(1)(a) through R68-7-18(1)(i) 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 shall 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 certified pesticide applicator.

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

(2) Fumigation of burrowing rodents requires strict adherence to the label as well as a Fumigation Management Plan (FMP) that shall contain the following information:

(a) the purpose of the pesticide application indicating the exact pest to be controlled, and the type of burrow system to be treated;

(b) the pesticide used, stating the name of the pesticide, the EPA registration number, and dosage used;

(c) the property treated information recording the property or facility name and address, and verifying the manager's or property owner's name and contact information;

(d) the certified pesticide applicator information recording the certified pesticide applicator's name, company, pesticide applicator license number, phone numbers, and verifying with valid government issued identification;

(e) any emergency agency contact information, recording the phone numbers for the nearest hospital, fire department, police department, poison control center, and the registrant of the fumigant; and

(f) instructions given to personnel, verifying by written signatures that personnel have been instructed to:

(i) report any accident or incident related to exposure, provide a telephone number for emergency response reporting;

(ii) report to the proper authorities any theft of fumigant or equipment related to fumigation; and

(iii) follow label directions, paying particular attention to the Monitoring, Notification, Sealing, Application Procedures, Fumigation Period, and Use Restrictions portions of the label instructions.

(g) Burrowing Rodent Fumigation Record Keeping: Additional Standards. In addition to the recordkeeping requirements contained in Sections R68-7-11 and R68-7-12, the applicator shall keep as part of the record a scaled diagram of the property treated that includes dimensions of the property, any structures present, and mark each burrow treated on the diagram.

R68-7-19. Transportation, Storage, Handling, Usage, and Disposal of Pesticides and Pesticide Containers.

Any pesticide applicator shall provide a secure pesticide and device storage area. The storage area may include an area on a service vehicle. Any pesticide applying entities shall also have, at a minimum, a pesticide spill kit in each pesticide service vehicle, pesticide service trailer, and at each pesticide business location.

(1) No person shall transport, store, or dispose of any pesticide or pesticide container in such a manner as to cause injury to humans, other non-target 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 damage or injure humans, other non-target 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, except 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 and shall use appropriately functioning devices and procedures to prevent back siphoning.

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

(9) No person shall apply pesticides if physical drift or volatilization may cause damage to adjacent land, injure humans or other species, or the environment.

(10) Requirements for unattended pesticides and their containers:

(a) Pesticides and their containers shall be maintained in accordance with generally accepted industry standards and practices.

(b) Subsections R68-7-19(10)(d) and (e) and Subsection R68-7-19(11) shall not apply to empty pesticide containers once decontaminated.

(c) For the purposes of Subsections R68-7-19(10)(d) and (e) and Subsection R68-7-19(11), pesticides and their containers at the loading area shall not be considered unattended if the operator maintains either visual control or repeatedly returns at closely spaced intervals to ensure safe monitoring of the pesticides and containers.

(d) Unattended pesticides labeled with the signal word "danger/poison" and their containers shall be constructed, stored 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," 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 Subsection R68-7-19(10)(d). Metal containers, 28 gallons and larger, with tight screw-type bungs 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 tall letters.

(b) Warning signs shall be posted:

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

(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) Each service vehicle and business location operated by a commercial pesticide business that carries, transports, or stores any pesticide concentrate or mixed pesticide solution must have, at minimum, a spill kit containing:

(a) a dustproof five-gallon bucket with a lid;

(b) waterproof gloves;

(c) three spill socks, each approximately three inches by 48 inches;

(d) ten medium weight absorbent pads, each approximately 15"x18"; and

(e) one medium weight trash bag to contain used absorbent material.

R68-7-20. Unlawful Acts.

Any person who has committed any of the following acts is in violation of Title 4, Chapter 14, Utah Pesticide Control Act, or rules promulgated thereunder, and is subject to the penalties provided in Section 4-2-301 through Section 4-2-305, up to, and including, citations, fines, and the possible suspension, revocation, or denial of any pesticide applicator, pesticide business, or pesticide dealer license:

(1) been convicted under Section 14(b) of FIFRA;

(2) been subject to a final order imposing a civil penalty under Section 14(a) of FIFRA;

(3) been found in violation of a final state enforcement action for violations of state law;

(4) made false, fictitious, or fraudulent claims, including any written or spoken misrepresentation of the use or effect of pesticides, the certification of any pesticide applicator, or the methods or manner in which pesticides may be applied or utilized;

(5) applied any known ineffective or improper pesticides;

(6) applied any pesticides in a faulty, careless, or negligent manner;

(7) failed to comply with Title 4, Chapter 14, Utah Pesticide Control Act, these rules, or any lawful order of the department;

(8) failure to keep or maintain records required by these rules, or to make reports when and as required, or to notify the department within 30 days of any changes required under Section R68-7-14;

(9) proffered false or fraudulent records, invoices, or reports to the department;

(10) engaged in the business, solicitation, advertisement, or representation of applying a pesticide for hire or compensation on the lands or property of another without having a valid commercial pesticide applicator license;

(11) purchased, used, or supervised the use of, a pesticide which is labeled for restricted use without having qualified as a certified pesticide applicator;

(12) used fraud, deceit, or misrepresentation in any portion of the application process for, or renewal of, a registration, license, permit, or certification with the department;

(13) refused or neglected to comply with any limitations or restrictions on or in a issued license or permit;

(14) 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;

(15) impersonated any federal, state, county, or other government official;

(16) distributed any pesticide labeled for restricted use to any person unless that person or their agent: has a valid pesticide applicator license, permit to use or supervise the use of, or distribute a restricted use pesticide;

(17) applied any pesticides on or in any building, structure, or property without the consent of the owner, manager, or responsible party, with the exception of any government agency that applies a pesticide to abate a public health problem under the direction of the department;

(18) for a pesticide applicator, applied a termiticide at less than the label rate;

(19) for an employer of a commercial or non-commercial pesticide applicator, to allow an employee to apply pesticide before that individual has successfully completed the required pesticide applicator certification process;

(20) a certified pesticide applicator failed to possess a current pesticide applicator license on their person during a pesticide application;

(21) allowed a pesticide application to run off, or drift, from the target pesticide application area, whether or not damage or injury occurred;

(22) failed to register a pesticide business with the department, or follow the rules set forth in this rule for the licensing of a commercial pesticide business;

(23) handled or applied any pesticide for which a person does not have an appropriate, complete, legible, and current label at hand or affixed to the pesticide;

(24) Failed to comply with the federal pesticide container and containment regulations found in 40 CFR 156 and 165;

(25) Failed to perform fumigation applications according to the standards required by this rule;

(26) Failed to display the pesticide business license name and pesticide business license number in accordance with this rule;

(27) Failed to notify a customer of the application of a restricted use pesticide and the information detailed in Section R68-7-16;

(28) The qualifying party of a commercial pesticide business failed to train or prepare a commercial pesticide applicator to comply fully with the following:

(a) any Utah pesticide statute;

- (b) any Utah pesticide rule;
 - (c) any pesticide label;
 - (d) any pesticide labeling directions; and
 - (e) any equipment they will be using.
- (29) Failure to timely and fully respond to requests by the department for information relating to training and equipping of pesticide applicators;
- (30) transported, stored, handled, used, or disposed of a pesticide or pesticides container that is inconsistent with this rule;
- (31) cheated on any pesticide test required by the department or otherwise failed to comply with testing requirements;
- (32) refused or neglected to change contact and employment information within 30 days;
- or
- (33) violated the EPA WPS.

R68-7-21. Penalty Matrix.

In the disposition of administrative cases, the department shall use a penalty matrix to determine appropriate penalties. The penalty amount shall be from \$50-500 per violation. The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effects at the time of the incident giving rise to the violation. The median penalty shall be assessed unless a proportionate adjustment is warranted or there are aggravating or mitigating factors present.

(1) The department may also choose to issue a warning, in lieu of penalty, where the penalty matrix allows. Any warning in lieu of penalty shall be issued in the department's sole discretion.

(2) The department may consider circumstances enhancing or reducing the penalty based on the seriousness of the violation. Aggravating and mitigating factors include the following:

- (a) the number of separate alleged violations for a given inspection or incident date;
- (b) the magnitude of the harm, or potential harm, including quantity or degree, to humans, non-target species, property, or the environment caused by the violation;
- (c) the similarity of the current alleged violation to violations committed by the pesticide applicator or business; and
- (d) the extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.

(3) The department will review past violation trends and update the penalty matrix based on compliance history annually. A copy of the penalty matrix shall be made available from the department upon request.

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