

# **ARKANSAS REGULATIONS ON PESTICIDE USE**

## **SECTION I. Title**

The following regulations of the Arkansas State Plant Board, written pursuant to the Arkansas Pesticide Use and Application Act, Act 389 of 1975, as amended, and the Arkansas Pesticide Control Act, Act 410 of 1975, as amended, shall be known as “ The Arkansas Regulations On Pesticide Use”. Promulgation of these regulations repeals all provisions of the Plant Board’s current regulations entitled “Arkansas Regulations On 2,4-D, 2,4-DB, MCPA, And Other State Restricted Use Herbicides” effective December 31, 2002.

## **SECTION II. Purpose**

Pesticides are valuable to the State’s agricultural production and to the protection of man and the environment from insects, rodents, weeds and other forms of life which may be pests; but it is essential to the public health and welfare that they be regulated to prevent adverse effects on human life and the environment. However, at times certain pesticides present problems that were unanticipated by the manufacturer, the grower or the applicator. The purpose of these regulations is to provide additional mechanisms, other than denying registration of a product in Arkansas, to minimize the adverse effects of certain pesticides to:

1. Plants, including forage plants, or adjacent or nearby lands;
2. Wildlife in the adjoining or nearby areas;
3. Fish and other aquatic life in waters in reasonable proximity to the area to be treated; and
4. Humans, animals, or beneficial insects

## **SECTION III. Definitions**

- A. “Buffer Zone” means the distance an applicator must maintain between the field or area of application and a protected subject inside of which the subject pesticide may not be applied.
- B. “Desirable Vegetation” means any type of vegetation the pesticide label specifically identifies for protection, vegetation for which the product is not labeled, or vegetation for which the owner/manager desires protection from the deposition of pesticides.
- C. “Drift” means off target movement of a pesticide onto desirable vegetation, waterways, or where human health or the environment may be adversely impacted that occurs as a result of pesticide application.

- D. “Custom Applicator” means a commercial applicator that applies pesticides assigned the Class E or F designation.

#### SECTION IV. General

The effective date of these regulations shall be January 1, 2003 and shall apply to all products registered for 2003. From that time forward, all pesticides registered for sale in the state of Arkansas shall be classified as Class A, B, C, D, E, F, or I. Such designation shall remain the same unless changed by the Arkansas State Plant Board by promulgation of a regulation so changing the designation. Whatever designation is assigned to a product by the Board, product dealers, users and applicators must comply with the restrictions for the assigned class. Such restrictions will apply to product uses allowed as a result of Section (18) or Section (24) actions under FIFRA except where the requirements on the label are clearly more restrictive than the Plant Board’s requirements, in which case the more restrictive requirement must be followed.

The following designations apply to all pesticide products registered in the State of Arkansas. The use-restrictions itemized below are intended to be in addition to the product label. However, where the label is more restrictive than the applicable restrictions listed below, then the label shall be followed. Each successive Class designation below includes the restrictions defined in the designations that precede it.

#### SECTION V. Class A

All pesticides when registered in the state of Arkansas shall be classified as Class A unless research or experience has shown that certain potential problems may be inherent with the use of the product. Such knowledge may be as a result of but not limited to research findings, findings of other state and federal agencies or experience of the Arkansas State Plant Board. In such cases the Plant Board may, by regulation, place the product in another Class.

Products with this classification must be used in accordance with the label restrictions and other restrictions, if any, imposed by Plant Board regulations other than this document. Insecticides that are intended to be applied in low volume, LV or Ultra Low Volume, ULV, and product label guidelines require droplet sizes designated as “fine” or smaller in accordance with the August 1999 issue of the ASAE S572 report entitled Spray Nozzle Classification by Droplet Spectra, shall not be required to comply with the Plant Board’s regulations regarding spray droplet size. Said products must comply with the product label.

#### SECTION VI. Class B

Products with this designation shall be used in accordance with all other applicable federal or state laws and the regulations written pursuant thereto, the label registered with the State of Arkansas, regulations promulgated by the Board, the applicable restrictions identified for Class A and the following additional restrictions.

- A. If enforcement action is taken against a Commercial, Non-Commercial or Private Applicator regarding drift of a product with this designation or a buffer zone violation, a part of the enforcement action will require the applicator to attend a drift control training class administered by the Plant Board or other training that is acceptable to the Plant Board.

#### SECTION VII Class C

Products with this designation shall be used in accordance with all other applicable federal or state laws and the regulations written pursuant thereto, the label registered with the State of Arkansas, the applicable restrictions identified for Class A and B above and the following additional restrictions.

- A. All commercial equipment used to apply pesticides with this designation must be in compliance with the application equipment set up requirements specified for herbicide applications contained in the regulations written pursuant to the Pesticide Use and Application Act of 1975, as amended, (PUAA) prior to the initial application. Thereafter, said application equipment set up must be inspected annually by the Plant Board to verify compliance with the set up that was originally authorized. If the application equipment is modified it must again be authorized to be in compliance with the requirements for herbicide application contained in the before referenced regulations. The Plant Board will inspect all application equipment each year that is used to apply products with the Class C designation. A fee of \$25 shall be charged for each Plant Board inspection.

Applications of products with this designation with equipment that is not acceptable to or has not been inspected by the Plant Board will be a violation of these regulations.

#### SECTION VIII Class D

Products with this designation shall be used in accordance with all other applicable federal or state laws and the regulations written pursuant thereto, the label registered with the State of Arkansas, the applicable restrictions identified for Class A, B, and C above and the following additional restrictions.

- A. Applications may be made only when the wind is not blowing in the direction of desirable vegetation, waterways, or where human health or the environment may be adversely impacted. Where desirable vegetation, waterways, or human health and the environment cannot be protected by ensuring they are not downwind from the application site then, unless a greater distance is required by the label or other applicable State or Federal regulations, a 300 foot minimum buffer zone must be maintained between the protected entity (desirable vegetation, waterway, etc) and the sprayed area.

#### SECTION IX Class E

Products with this designation shall be used in accordance with all other applicable federal or

state laws and the regulations written pursuant thereto, the label registered with the State of Arkansas, the applicable restrictions identified for Class A, B, C, and D above and the following additional restrictions.

A. Dealers Requirements

1. Before selling, offering for sale, or distributing pesticides with this designation in packages of more than one quart, a dealer must be a licensed Restricted Use Pesticides dealer. A dealer may sell, offer for sale, or distribute only those pesticides that are registered in the State.
2. Each branch of a license holding dealer which also sells or distributes these products must have a dealer's license. Firms or distributors who take orders for these products must secure a dealer's license, even though the order is placed with a dealer or manufacturer who holds a license, and even though no profit is made.
3. Dealers must keep a record of each sale or distribution of products with this designation to custom or private applicators or dealers in containers of more than one (1) quart on forms available from or approved by the Plant Board. Entries in the record shall be made at the time of sale or distribution and shall include the date of the purchase, the name, address and license or permit number of the purchaser and the name and address of the delivery location. The complete brand name and quantity of the product shall also be recorded. These records shall be kept by the dealer for two years from the date of sale and be made available for inspection by the Plant Board or its representative upon request.
4. The sale or distribution of products with this classification in containers of more than one (1) quart to any firm or person other than a dealer, custom or private applicator holding a current and valid license or permit is prohibited. Dealer must have a copy of the applicator's current license on file.
5. Non-residents of Arkansas shall designate and maintain a resident agent in this state for service of process.

B. Requirements For Custom Application

The application of products with the Class E or F designation shall be known as Custom Application. To be eligible to apply products with the Class E or Class F designation, a Commercial Application Firm must obtain a Firm's Custom Applicator Permit from the Plant Board prior to making any applications. Said permit must designate an Operator-in-Charge whose responsibility is to supervise all custom applications made by the firm. Issuance of the permit shall be conditioned on the following:

1. Commercial Aerial Application Firms must have a Firm's Commercial Applicator License issued by the Plant Board to apply pesticides in Arkansas.

- a. All pilots that apply pesticides for the Firm must have an Individual Commercial Applicator Pilot License (w/category) issued by the Plant Board.
    - i. The Firm must have a copy of all Individual Commercial Applicator Pilot Licenses held by pilots employed by the Firm.
  - b. Commercial Aerial Application Firms that wish to apply products with the Class E or F designation must obtain a Firm's Custom Applicator Permit from the Plant Board.
    - i. The Firm's Permit must designate at least one of its Licensed Individual Commercial Applicators that has passed the Custom Applicator test as an Operator-in-Charge.
    - ii. All Pilots making Custom Applications must have an Individual Commercial Applicator Pilot License with Authorization to apply Class E or F products. Said Authorization is obtained by passing a Custom Applicator written test administered by the Plant Board
2. Commercial Ground Application Firms must have a Firm's Commercial Applicator License issued by the Plant Board.
- a. At least one person working for the Firm must have an Individual Commercial Applicator License (w/category) issued by the Plant Board.
  - b. Commercial Ground Application Firms that wish to apply products with the Class E or F designation must obtain a Firm's Custom Application Permit.
    - i. The Firm's Permit must designate at least one of its' Licensed Individual Commercial Applicators that has passed the Custom Applicator test as an Operator-in-Charge.
3. The application vehicle must be covered by a current certificate of inspection as required in Section VII of these regulations.
4. Licensed Commercial Application Firms that do tree injection work only, do not need a Firm's Custom Applicator Permit to apply products with the Class E or F designation. For such firms, a Tree Injector's Permit is required. However, the Firm's Tree Injector Permit must designate at least one of the Firm's Licensed Individual Commercial Applicators that has passed the Tree Injector test administered by the Plant Board as an Operator-in-Charge.

5. A deposit of \$250.00 shall be made with the Plant Board by the Custom Application Firm, except that those persons doing tree injector work exclusively will deposit \$10.00 per tree injector, up to a maximum of \$250.00. Said deposit shall be returned at the expiration of the permit upon request unless the Custom Applicator is found in violation of the Plant Board's regulations or suffers cancellation of his/her Custom Applicator's permit. In which case the deposit will be retained by the Plant Board to supplement cost recovery of inspection and administration incidental to such finding.
6. A deposit of funds as described in IX(B)(5) and proof of financial responsibility, as described below is required. Non-residents of Arkansas shall designate and maintain a resident agent in this state for service of process. Custom Application Permits, Custom Application Authorizations, and Tree Injector Permits shall expire December 31<sup>st</sup> of each year.

Financial responsibility in the minimum of \$100,000 shall be maintained by the Custom Application Firm or Tree Injection Firm during the term of his/her permit, with proof of such financial responsibility submitted to the Plant Board.

Proof of financial responsibility shall consist of one of the following:

- a. The deposit of a certificate of insurance or insurance policy not to exceed \$5,000 deductible from an insurer or surplus line broker authorized to do business in Arkansas insuring the Custom Application Firm and any of its agents against liability for injury resulting from the application of products with this designation.  
  
If a claim is made on this type of policy, then the policy must not expire for at least six (6) months after the expiration of the permit;
  - b. A letter of credit from a bank located in Arkansas guaranteeing financial responsibility;
  - c. A surety bond; or
  - d. An escrow account with a bank located in Arkansas.
7. Application for a permit must be made on forms furnished by the Plant Board accompanied by the following fees:
    - a. Aerial Custom Application Firms must pay an annual application processing fee of \$150.00 plus \$50.00 for each Operator-in-Charge. Pilots making Custom Applications must pay an annual application processing

fee of \$35.00 for Authorization to apply products in Classes E and F.

- b. Ground Custom Application Firms must pay an annual application processing fee of \$150.00 plus \$50.00 for each Operator-in-Charge.
- c. Applicants for a Tree Injector's Permit must pay an annual application processing fee of \$50.00 plus \$50.00 for each Operator-in-Charge.

Should, at any time, a Custom Application Firm be left without an Operator-in-Charge or a pilot with an Individual Commercial Applicator Pilot License with Authorization to apply products with the Class E or F designation, either because of invalidation of the permit or for any other reason, such shall automatically invalidate the custom applicator's firm permit. It shall be a violation of these regulations for an individual or firm to act as a Custom Applicator that is not licensed to do so by the Plant Board.

- 8. The Plant Board or its authorized representative(s) may refuse issuance, after a hearing, of a custom applicator's permit to any applicant when such applicant has been found in violation of these regulations four times in a three year period. Such applicant may appeal to the Board. All requests for an appeal must be made in accordance with the Plant Board's policy on appealing a decision.
- 9. All equipment used for custom application of the products with this designation must have a decal provided by the Plant Board affixed to the device in a location where it can be easily seen by a Plant Board representative and protected from removal or disfigurement by work activity. This decal may only be affixed to equipment that meets the requirements set out in these regulations and other applicable regulations promulgated by the Plant Board. Use of equipment for custom application that does not have a current decal will be a violation of these regulations. Decals are not transferable between equipment. Each decal shall be issued at a cost of \$50.00 each. Subsequent to issuance of a decal, the equipment on which the decal is to be attached will be subject to inspection by the Plant Board. Equipment found not meeting the requirements set out by these regulations or other applicable regulations promulgated by the Plant Board will be issued a Stop Use Order that will be released by the Plant Board once the Plant Board is satisfied that the equipment meets the set up requirements of the applicable regulations. The applicator will also be considered in violation of the Plant Board's regulations on pesticide application and be subject to the required enforcement action. All decals and permits expire on December 31<sup>st</sup> of each year.

Equipment used to apply pesticides with this designation shall not be used for the application of other pesticides that do not carry this designation or the Class F designation unless the following has been done:

- a. The vehicle must be thoroughly decontaminated;

- b. The tank must be thoroughly rinsed and the rinsate disposed of in accordance with the label. If the label does not address rinsate disposal, the rinsate should be collected and disposed of in accordance with applicable state and federal disposal laws; and
  - c. The entire spray or application system must be replaced or decontaminated using the best available technology such that a sample taken from the successive pesticide tank load would contain no detectable concentration of the previous product. Where research has established a concentration below which no adverse effects occur and that concentration level is not a violation of state or federal law or regulations written pursuant to such laws, then that established concentration will be acceptable. Compliance with this provision in no way exempts the product user from compliance with any other responsibility imposed by state or federal law or regulation written pursuant thereto. Pesticide application equipment must have a leak free valve that is painted hunter orange from which a sample can be taken. Aircraft must have a sample valve located at the low point in the spray system. Ground application equipment must have a sample valve located in the pressure by-pass line.
10. All firms desiring to do custom application work must have a Custom Application Permit to do so. Said permit must designate an Operator-In-Charge. Eligibility as Operator-in-Charge will be conditioned on the following;
- a. Achieving a score of 70% or better on an examination administered by the Plant Board,
  - b. Pilots must hold a valid FAA pilot's Commercial Certificate,
  - c. Applicant may not have more than four (4) enforcement actions indicated on the Plant Board's records in the three years prior to the date of testing, and
  - d. The fee for each test shall be \$35.

Pilots and Operator's-In-Charge shall be responsible for notifying the Plant Board of the name and location of employment prior to starting work.

11. The Custom Application Firm must maintain records of each application of products with this and the Class F designation. Said records must be retained at the principal Arkansas office of the Custom Application Firm as indicated on the Firm license for a period of three (3) years and be available for inspection by a Plant Board representative. The records shall include at a minimum the following information:

- a. Name and address of the person(s) in control of the crops, plant, etc;
- b. Location of the crop, plants, etc. treated. Location description must include county, nearest town, physical address if available, and GPS or map coordinates of the primary entrance to the field;
- c. Date, start and ending time of the application;
- d. Wind speed and direction at the start and ending time of the application and the type of instrument used to measure wind speed and direction. The location of instrument at time of reading (preferably “field of application”) must also be recorded;
- e. Complete brand name and EPA registration number of the material used;
- f. Number of acres and type of crop to which the material was applied;
- g. Type of equipment used and the Firm’s Custom Application Equipment number assigned to it by the Plant Board;
- h. Distance from and direction to any susceptible crops within a one mile radius of the treated crop; and
- i. Name of the application vehicle operator.

C. Requirements For Non-Custom Application Of Products In This Class

1. Whether designated as “Restricted” by the EPA or not, products in containers of more than one (1) quart with this class designation and the Class F designation may not be purchased by or sold to persons who do not have a current Commercial, Non-Commercial, or Private applicator’s license.
2. All applications of products with this designation by Private Applicators must be in accordance with the applicable application conditions required of the custom applicator.
3. The Private Applicator must maintain records of each application of products with this and the Class F designation. Said records must be retained for a period of three (3) years and be available for inspection by a Plant Board representative. The records shall include at a minimum the following information:
  - a. Name and address of the person(s) in control of the crops, plant, etc;
  - b. Location of the crop, plants, etc. treated. Location description must

include county, nearest town, physical address if available, and GPS reading or map coordinates of the primary entrance to the field;

- c. Date, start and ending time of the application;
- d. Wind speed and direction at the start and ending time of the application and type of instrument used to measure wind speed and direction. The location of instrument at time of reading (preferably “field of application”) must also be recorded;
- e. Complete brand name and EPA registration number of the material used;
- f. Number of acres and type of crop to which the material was applied;
- g. Type of equipment used. If the product was applied by a custom applicator, record the Firm’s Custom Application Equipment number assigned to the equipment used by the Plant Board;
- h. Distance from and direction to any susceptible crops within a one mile radius of the treated crop; and
- i. Name of the application vehicle operator.

#### D. Exemptions

1. The licensing requirements of these regulations do not apply to the U. S. Department of Agriculture, the Arkansas Experiment Stations and other State or Federal Agencies, to ornamental and turf weed control, or to company demonstrations with ground equipment, or to sales of fertilizer, soil conditioners or similar products containing registered products with this designation and packaged for home use. Provided that nothing in this section shall be construed as exempting custom applicators from the provisions of these regulations when making applications for the agencies listed herein, or exempting any such agency acting as a dealer from the dealer requirements.
2. Products with the Class E or F designation that are not designated as restricted use products by the Environmental Protection Agency may be purchased from an Arkansas pesticide dealer for use outside the state of Arkansas without the dealer having to have a dealer’s license or the purchaser having an applicator’s license.
3. Commercial Applicators and Private Applicators that can provide proof of current certification and licensing from another State may purchase restricted use pesticides from a restricted use pesticide dealer licensed in Arkansas if the product is to be used outside of Arkansas.

## SECTION X Class F

Products with this designation shall be used in accordance with all other applicable federal or state laws and the regulations written pursuant thereto, the label registered with the State of Arkansas, the applicable requirements identified for Class A, B, C, D, and E above, and the following additional restrictions.

- A. Dealers may not store or transport products with this designation in the same room or vehicle with seeds, other pesticides that do not have this designation, or fertilizers except in leak-proof containers not to be opened while in storage and must observe all other precautions necessary to prevent contamination of these products.
- B. The use of esters of the products with this designation, except low-volatile esters, is prohibited.
- C. No product with this designation may be applied within 1/4 mile of susceptible crops.
- D. From April 15<sup>th</sup> through September 15<sup>th</sup> of each year a buffer zone between the field to be treated and susceptible crops of four (4) miles for aerial application and one (1) mile for ground application shall be maintained.
- E. Any custom applicator who violates the buffer zones defined in Section (X)(D) shall be subject to a civil penalty as prescribed by the penalty matrix for the violation plus \$1000. However, the total civil penalty for one violation may not exceed \$2000. Failure to comply with the decontamination requirements of Section (IX)(B)(9) of these regulations before making an application of a product with a Class A, B, C or D designation inside a designated buffer zone for Class E and F products will be considered a buffer zone violation.
- F. Products with this designation shall be applied in accordance with the application equipment set up required for herbicide applications to field crops itemized in the regulations written pursuant the Pesticide Use and Application Act of 1975, as amended. Except that these conditions will apply, in addition to field crops, to pastures, rights-of-way, drainage ditches, brush and forest land.
- G. The wind velocity during the application shall not exceed eight (8) mph and the temperature may not exceed 90 degrees F.
- H. Applications of products with this classification shall not be made in the area(s) defined below unless the following conditions exist:
  - 1. For applications made before noon, the air temperature at the field of application at the beginning of the application must be a minimum of three (3) degrees Fahrenheit above the morning low measured at the applicator's air strip or mixing/loading facility. If the applicator has knowledge that the temperature

measurement at his/her air strip or mixing/loading facility would not be the same as a reading taken at the same time at the field of application, then all temperature readings must be taken at the field of application.

2. For applications made after noon, the temperature at the field of application must not have decreased more than three (3) degrees Fahrenheit from the afternoon high measured at the applicator's air strip or mixing/loading facility. If the applicator has knowledge that the temperature measurement at his/her air strip or mixing/loading facility would not be the same as a reading taken at the same time at the field of application, then all temperature readings must be taken at the field of application.

All temperature measurements referenced above must be maintained by the grower as well as the applicator and be made available to the Plant Board upon request.

AREA 1: Clay County- West of Crowley's Ridge and east of the Black River or the railroad right-of-way that runs between Peach Orchard and Moark, whichever is closer to Crowley's Ridge.

AREA 2: Greene County- West of Crowley's Ridge and east of the western border of Greene County or the railroad right-of-way that runs between Okean and Delaplaine, whichever is closer.

## SECTION XI Class I

Products with this designation are those for which none of the aforementioned classification or any combination thereof will resolve to an acceptable level the problems associated with the use of such product.

## SECTION XII Product Classification

Class A All registered pesticides not otherwise assigned below

Class B

Class C

Class D

Class E

Class F All 2,4-D and 2,4-D Containing Pesticides, MCPA

Class G Reserved

Class H      Reserved

Class I      Facet: See Attachment 1