

NEBRASKA ADMINISTRATIVE CODE

TITLE 25 NEBRASKA ADMINISTRATIVE CODE CHAPTER 2

NEBRASKA DEPARTMENT OF AGRICULTURE

PESTICIDE REGULATIONS

October, 2013

NEBRASKA ADMINISTRATIVE CODE

TITLE 25 - DEPARTMENT OF AGRICULTURE, ~~BUREAU OF PLANT INDUSTRY~~

CHAPTER 2 - PESTICIDE REGULATIONS

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LAST DATE AMENDED: October 7, 2008

TITLE 25 - DEPARTMENT OF AGRICULTURE, ~~BUREAU OF PLANT INDUSTRY~~

Chapter 2 - PESTICIDE REGULATIONS

001 Statement of Purpose. The purpose of these regulations is to aid in the administration of the Pesticide Act, Neb. Rev. Stat. §§2-2622 to 2-2655 ~~2-2655~~ 2-2659.

002 Administration. These regulations shall be administered by the Department of Agriculture ~~Agriculture's Bureau of Plant Industry~~ located in the State Office Building, Fourth Floor, 301 Centennial Mall South, Lincoln, Nebraska. The mailing address is P.O. Box 94756, Lincoln, Nebraska 68509-4756. The telephone number is ~~(402) 471-2394~~ (402) 471-2351. The fax number is (402) 471-6892.

003 Definitions. In addition to the terms listed below, the definition of terms found in the Pesticide Act shall apply to such terms when found in these regulations.

003.01 LEVEL OF VIOLATION shall mean the alleged violation is a first or subsequent violation.

003.02 FIRST VIOLATION shall mean the alleged violator has not been found by an order of the director or any court, or by his or her own admission in a settlement agreement, to have committed a violation of the act in the three years immediately preceding the date of the alleged violation.

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003.03 SUBSEQUENT VIOLATION shall mean the alleged violator has been found by an order of the director or any court, or by his or her own admission in a settlement agreement, to have committed a violation of the act one or more times within the three years immediately preceding the date of committing the current alleged violation.

003.04 BASE FINE shall mean the amount of the administrative fine set by regulation for a particular violation of the act prior to any adjustments for gravity or size of business.

003.05 SETTLEMENT AGREEMENT shall mean a written agreement between the department and an alleged violator resolving any matter before the department.

003.06 MINOR HARM shall mean actual or potential harm which is or would be of short duration, has no lasting effects or permanent damage, or is easily reversible and harm did not or would not result in significant monetary loss.

003.07 SERIOUS OR WIDESPREAD HARM shall mean actual or potential harm to human health or to the environment which does not meet the parameters of minor harm.

003.08 LAWN CARE PESTICIDE shall mean any pesticide applied under the ornamental and turf pest control category.

003.09 USE shall mean the method by which a pesticide is mixed, diluted, loaded, applied or released and disposed. For the purposes of applicator certification, the term includes mixing and loading of pesticides, or cleaning residues from pesticide containers but excludes the physical transport of concentrate or diluted pesticides to the site of application.

003.10 Forest shall mean an area of at least one-quarter acre of contiguous trees that are intentionally managed or maintained.

004 Fees.

004.01 Pesticide Registration Fees. There shall be paid to the department an annual fee of ~~\$200~~ 160 for each pesticide product to be registered in the state, ~~which is not a specialty pesticide. There shall be paid to the department an annual fee of \$160 for each specialty pesticide product to be registered in the state.~~ Such fees shall be due by January 1st of each year. If a person fails to apply for a renewal of registration before January 1 of any year, such person, as a condition to renewal, shall pay a late registration fee equal to 25% of the fee due and owing per month, not to exceed 100% for each product to be renewed in addition to their renewal fees.

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004.02 Dealer License Fee. All dealers shall pay to the department an annual license fee of \$25. Such license shall be required for each location where pesticides are distributed at retail or wholesale but should not include any location where pesticides are stored and later distributed to other locations owned by the same dealer. Those persons who distribute pesticides, including traditional or electronic brokerages or auctions, but do not have a permanent location shall also obtain a dealer license.

004.03 Commercial Applicator License Fees. Prior to being issued a commercial applicator license, applicators shall pay to the Department a fee of \$90.

004.03A The fee for commercial applicators shall be paid prior to the expiration of the certification or re-certification. A commercial applicator license will not be issued until the license fee is paid.

004.03B Reciprocal commercial applicator licenses shall expire on the expiration date of their license or certification from the issuing state or up to three years, whichever comes first.

004.03C Failure to pay the commercial applicator license fee before the certification or recertification period expires shall result in an expired license, which can then only be renewed by testing.

004.04 Private Applicator License Fees. Prior to being issued a private applicator license, applicators shall pay to the Department a fee of \$25.

004.04A The fee for private applicators shall be paid prior to the expiration of the certification or re-certification. A private applicator license will not be issued until the license fee is paid.

004.04B Failure to pay the private applicator license fee before the certification or recertification period expires shall result in an expired license, which can then only be renewed by testing or attending full applicator recertification training.

005 Standards for Pesticide Applicators. Any person making a pesticide application requiring certification pursuant to the Act, shall apply for and possess, either an original or reciprocal Nebraska Pesticide Applicator Certification License. Applications shall be made on a form provided by the department. The license shall expire on April 15th ~~following~~ on the third year ~~in~~ after which it was issued.

005.01 General Standards for Certified Applicators. All certified applicators shall demonstrate practical knowledge of the principles and practices of pest control and safety in use of pesticides. Determination of competency shall be based on

examples of problems and situations appropriate to the particular category or subcategory of the applicator's licensure and knowledge of the following areas:

005.01A Label and Labeling Comprehension.

005.01A(1) The general format and terminology of pesticide labels and labeling;

005.01A(2) The understanding of instructions, directions for use, warnings, terms, names, symbols, and other information commonly appearing on pesticide labels;

005.01A(3) Classification of pesticides and meaning of the terms, "general and restricted-use pesticide"; and

005.01A(4) Necessity for use consistent with the label. Labels and labeling are legal documents and the directions they contain shall be followed.

005.01B Safety. Factors including:

005.01B(1) Understanding the terms acute and chronic pesticide toxicity, common exposure routes and how such hazard is determined by pesticide toxicity and exposure;

005.01B(2) Common types and causes of pesticide accidents;

005.01B(3) Precautions necessary to prevent injury to applicators and other individuals in or near treated areas;

005.01B(4) Recognition of symptoms of acute pesticide toxicity and practical treatment;

005.01B(5) First aid and other procedures to be followed in case of a pesticide accident;

005.01B(6) Worker protection, including warnings and re-entry restrictions; and

005.01B(7) Proper identification, storage, transport, handling, mixing, and application 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, and the need for and use of personal protective clothing and equipment.

005.01C Environmental Risk. The potential environmental consequences of the use and misuse of pesticides that may cause drift and runoff, precautions for protection of endangered and threatened species, and methods of spill prevention and control. Such consequences may be influenced by such factors as:

005.01C(1) Weather and other climatic factors that contribute to pesticide drift and run off;

005.01C(2) How terrain, soil and other substrata influence surface and ground water contamination;

005.01C(3) Recognition of sensitive areas, fish, wildlife and other nontarget organisms affected by pesticide applications, drift and runoff; and

005.01C(4) Drainage patterns; and

005.01C(5) Knowledge of management practices and their application to prevent pesticides from reaching ground water and surface water.

005.01D Pest Identification and Biology. Factors such as:

005.01D(1) Understanding what a pest is, and why integrated pest management (IPM) is critical in determining when and how pesticides control pests. Common features of pest organisms and recognition of characteristics of damage or problems caused by pests and needed for pest recognition;

005.01D(2) Principles of pest identification and recognition of relevant pests; and

005.01D(3) Pest development and biology as it may be relevant to problem identification and control.

005.01E Pesticides and chemical control. Factors such as:

005.01E(1) Types of pesticides;

005.01E(2) Types of formulations and adjuvants;

005.01E(3) Concepts of pesticide compatibility, synergism, persistence, toxicity of the formulations, and animal and plant resistance;

005.01E(4) Hazards and residues associated with use;

005.01E(5) Factors which affect a pesticide's effectiveness or lead to such problems as resistance to pesticides;

005.01E(6) Selection of correct formulation and method of application for a use site, pest, and pesticide; and

005.01E(7) Dilution procedures.

005.01F Equipment. Factors including:

005.01F(1) Characteristics and main uses of typical pesticide application equipment and advantages and limitations of each type, including selection of the most appropriate equipment for applicable situations; and

005.01F(2) Proper use, care and maintenance, and calibration of application equipment.

005.01G Application techniques. Factors including:

005.01G(1) Methods used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which technique of application to use in a given situation;

005.01G(2) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and

005.01G(3) Prevention of drift and pesticide loss into the environment, including the concept of vapor drift of volatile pesticide formulations. ; ~~and~~

005.01H Calibration and calculation.

005.01H(1) Dilution of concentrate formulations in accordance with label directions.

005.01H(2) Calculation of area or volume to be treated and amount of pesticide to be applied.; and

005.01H(3) Adjustment of application equipment's nozzle, pressure, and speed to obtain correct pesticide output.

005.01I Applicator related laws and regulations.

005.01I(1) Applicable federal and state laws and regulations.

005.01I(2) Applicator responsibility for pesticide use consistent with its label or labeling and supervision of noncertified employees assigned to use a restricted-use pesticide.

005.01I(3) Applicator liability and penalties.

005.01J Other. Worker protection standards, endangered species protection requirements, and ground water protection.

005.02 Commercial and Noncommercial Applicators.

005.02A Categories and Subcategories. Commercial and noncommercial applicators may elect to be trained, examined and certified according to the following categories and subcategories:

005.02A(1) Agricultural pest control - plant. This category includes commercial and noncommercial applicators using or supervising the use of restricted-use pesticides in production of agricultural crops, including, but not limited to feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; as well as on grasslands and non-crop agricultural land that are used to produce hay or to graze animals.

005.02A(1)(a) Fumigation of soil. This subcategory includes commercial and noncommercial applicators using or supervising the application of restricted-use pesticides for soil fumigation in production of an agricultural commodity. Any individual certified in this category is required to be certified in 005.02A(1)-agricultural pest control-plant.

005.02A(2) Agricultural pest control - animal. This category includes commercial and noncommercial applicators using or supervising the use of restricted-use pesticides on animals, including, but not limited to beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and other livestock, and to places on or in which animals are confined. Doctors of veterinary medicine engaged in the business of applying restricted-use pesticides are included in this category.

005.02A(3) Forest pest control. This category includes commercial and noncommercial applicators using or supervising the use of restricted-use pesticides in forests, forest nurseries, and forest seed producing areas.

005.02A(4) Ornamental and turf pest control. This category includes commercial applicators using or supervising the use of restricted-use or general pesticides and noncommercial applicators using or supervising the use of restricted-use pesticides to control pests in all lawn care applications, including the maintenance and production of ornamental trees, shrubs, flowers, and turf, including in and around structures, green houses, plant nurseries, cemeteries, golf courses, athletic fields, public or private grounds and turf farms.

005.02A(5) Aquatic pest control. This category includes commercial and noncommercial applicators using or supervising the use of a restricted-use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in 005.02A(9) below.

005.02A(5)(a) Sewer Use of Metam Sodium. This subcategory includes commercial and noncommercial applicators using, or supervising the use of, metam sodium in sewer lines for plant root control. An applicator may choose to be certified in this subcategory alone or together with any other category.

005.02A(6) Seed treatment. This category includes commercial and noncommercial applicators using or supervising the use of restricted-use pesticides on seeds.

005.02A(7) Right-of-way pest control. This category includes commercial and noncommercial applicators using or supervising the use of restricted-use pesticides in the maintenance of public roads, electric power lines, pipelines, irrigation canals or ditches, railway rights-of-way, fencelines, parking areas, utility lots, structural perimeters, and other similar areas.

005.02A(8) Structural and health related pest control. This category ~~also~~ includes commercial ~~and noncommercial~~ applicators using or supervising the use of restricted-use or general pesticides and noncommercial applicators using or supervising the use of restricted-use pesticides in, on, or around human dwellings, institutions, such as food handling, preparation, manufacturing, processing, packaging and dining facilities, schools and hospitals, industrial establishments, including warehouses, and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products.

This category includes commercial and noncommercial applicators using restricted-use pesticides to control insects, ~~structural wood destroying pests~~, pest birds, and vertebrate pests. Any person who applies structural pest control pesticides to the land of another for hire or compensation shall be licensed in this category regardless of whether such person applies any restricted-use pesticides.

005.02A(8)(a) Wood Destroying Organisms. This subcategory includes commercial or noncommercial applicators using or supervising the use of restricted-use or general-use pesticides in or around structures for the control of wood destroying organisms such as termites, carpenter ants, fungus or beetle species. Any person who applies structural pest control pesticides to control wood destroying organisms to the land of another for hire or compensation shall be licensed in this subcategory regardless of whether such person applies general-use or restricted-use pesticides. An individual may choose to be certified in this subcategory alone or together with any other category.

005.02A(9) Public health pest control. This category includes commercial ~~or~~ and noncommercial applicators using or supervising the use of restricted-use pesticides for hire or compensation or for state, federal or other governmental units in public health programs for the management and control of pests, such as mosquito and other insect or vertebrate disease vectors, having medical and public health importance, and which are made on a wide area basis beyond the control of an individual property. This category also includes commercial and noncommercial applicators using or supervising the use of restricted-use pesticides in ~~swimming pools and related facilities and~~ cooling water systems used to transfer or dissipate heat. This category also includes commercial and noncommercial applicators using or supervising the use of restricted-use pesticides to disinfect or sterilize medical/veterinary equipment, food/beverage/drug processing equipment, and the environmental surfaces of such places as hospitals/nursing homes, food processing areas, and plant and animal breeding facilities.

~~005.02A(9)(a) Chlorine Products Use. This subcategory includes commercial and noncommercial applicators using, or supervising the use of, restricted-use formulations of chlorine products, including pressurized gas and others declared restricted by the U.S. Environmental Protection Agency. Areas typically receiving chlorine applications may include swimming pools, food processing plants, cooling towers, or other industrial or institutional sites. An applicator~~

~~may choose to be certified in this subcategory alone or together with any other category.~~

005.02A(10) Wood preservation. This category includes commercial and noncommercial applicators using or supervising the use of any restricted-use pesticide for preservative treatment of wood or wood products by pressure or nonpressure methods to protect wood that will be exposed to weather, including ground line pole treatment, waterproofing millwork, cutoffs, or supplemental field treatment.

005.02A(11) Structural Fumigation. This category includes commercial and noncommercial applicators who use or supervise the use of restricted-use pesticides, in gaseous or solid form, within structures and other enclosed gas tight spaces such as tents, vaults, stacks, ~~structures~~, vehicles, or vessels for a wide variety of conditions and commodities, including raw agricultural products. This category does not include the use of gaseous or solid fumigants for the control of vertebrate pest species in burrows or open areas.

005.02A(12) Aerial pest control. This category includes commercial and noncommercial applicators using or supervising the use of restricted-use pesticides applied by fixed or rotary wing aircraft for use in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, fencelines, structural perimeters, other similar areas, and in the production of agricultural crops, including, but not limited to feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; grasslands, and non-crop agricultural land.

005.02A(13) Wildlife Damage Control. This category includes commercial ~~or~~ and noncommercial applicators who use, or supervise the use of, restricted- or general-use pesticides, including gaseous or solid fumigants, in the management of vertebrate wildlife to control the damage that they cause. This category would include persons attempting to manage pests such as coyotes, prairie dogs, moles, ground squirrels, pocket gophers, rabbits, muskrat, deer, or birds in situations where the animals are not invading residential or industrial structures.

005.02A(14) Subcategories for Regulatory Work, Demonstration or Research. The following subcategories may only be issued in conjunction with at least one other category:

005.02A(14)(a) Demonstration/Research Subcategory. This subcategory includes ~~commercial or~~ and noncommercial applicators who create research plots or demonstrate to the public the proper use and techniques of applying restricted-use pesticides or supervising such demonstrations. Examples are such persons as university researchers or extension specialists, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. Also included in this subcategory are commercial applicators conducting field research who use, or supervise the use of, restricted-use pesticides.

005.02A(14)(b) Regulatory. This subcategory includes commercial ~~or~~ and noncommercial applicators using, or supervising the use of, restricted-use pesticides for federal, state, or other governmental units in the control of regulated pests. Examples are such persons as federal quarantine or predatory pest control officials using restricted-use pesticides to control an outbreak of a regulated pest.

005.02B Specific Standards of Competency. Commercial and noncommercial applicators shall be required to satisfactorily demonstrate competence in the use and handling of pesticides specific to their certification as such pesticides may be used in Nebraska. Subject demonstration shall be on the basis of a written examination, and as appropriate, performance testing, as a prerequisite to initial certification. A commercial or noncommercial applicator shall not be required to satisfactorily complete training as a prerequisite to examination for licensing. Standards for determination of competency are as set forth below and those which may be approved by the director. Such examination and testing shall include the general standards applicable to all certified applicators and the additional standards specifically identified for each category or subcategory (if any) in which an applicator is to be certified. The specific standards of competency in paragraphs 005.02B(1) through 005.02B(13) below do not apply to persons conducting laboratory type research involving restricted-use pesticides.

005.02B(1) Agricultural pest control - plant. Applicators shall demonstrate practical knowledge of: crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential

for environmental contamination, nontarget injury and community problems resulting from the use of restricted-use pesticides in agricultural areas. Those applicators using their restricted use pesticides through an irrigation system must also be licensed according to the Nebraska Chemigation Act, Neb. Rev. Stat. §§46-1101 through 46-1148. ~~They shall demonstrate a practical knowledge of equipment associated with chemigation including calibration techniques, and use of backflow prevention devices to prevent contamination of water supplies. They shall demonstrate knowledge of labeling requirements of products registered for chemigation including posting requirements. Further, they shall demonstrate knowledge of the appropriate use of personal protective equipment associated with this type of application.~~

005.02B(1)(a) Fumigation of soil. Applicators shall demonstrate practical knowledge of the use of personal protective equipment for fumigation, general safety procedures, including worker training, notification, fumigation management plan development, site posting, air monitoring, re-entry and aeration. Further they shall demonstrate knowledge of emergency procedures and application techniques appropriate to various situations.

005.02B(2) Agricultural pest control - animal. Applicators applying pesticides directly to animals shall demonstrate practical knowledge of: such animals as may be treated and their associated pests; specific pesticide toxicity and residue potential since host animals will frequently be used for food; and the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.

005.02B(3) Forest pest control. Applicators shall demonstrate practical knowledge of: the types of forests, forest nurseries, seed production, and types of pests involved; the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications; the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of: control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife; and proper use of specialized equipment, especially as it may relate to meteorological factors and adjacent land use.

005.02B(4) Ornamental and turf pest control. Applicators shall demonstrate practical knowledge of: pesticide problems associated with the production and maintenance of lawns and turf grass, ornamental trees, shrubs, plantings, and flowers used in and around structures, green houses, and plant nurseries. They shall demonstrate knowledge of pesticide problems, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control; and application methods which will minimize or prevent hazards to humans, pets and other domestic animals, and wildlife. Because of human proximity to application sites, applicators shall demonstrate practical knowledge of methods and measures used to protect applicators, residents, occupants, workers, pets and other animals, ~~and others that may contact treated plants.~~

Applicators shall demonstrate practical knowledge of pesticide application methods used in turf management and production and the risks associated with pesticide drift and runoff. Because of the persistence of turf pesticides, applicators shall demonstrate a practical knowledge of measures used to protect humans, pets, and other domestic or wild animals that may contact treated turf.

005.02B(5) Aquatic pest control. Applicators in this category shall demonstrate practical knowledge of: the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted-use pesticides used in this category; various water use situations and the potential for downstream effects; potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments; and the principles of limited area application.

005.02B(5)(a) Sewer Use of Metam Sodium. Applicators in this subcategory shall demonstrate practical knowledge of the secondary effects of metam sodium on downstream water bodies (streams, rivers, ponds, and groundwater) and lateral and upstream residential and nonresidential sewer connections; the importance and use of personal protective equipment; and the proper measurement, calibration, and application of metam sodium.

005.02B(6) Seed treatment. Applicators shall demonstrate practical knowledge of: the types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination; ~~and~~ the hazards associated

with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, the generation of dust lubricants capable of causing pesticide exposure to pollinating insects, as well as proper disposal of unused treated seed.

005.02B(7) Right-of-way pest control. Applicators shall demonstrate practical knowledge of: ~~a~~ the wide variety of environments since and terrain that rights-of-way can traverse many different terrains, including waterways; problems concerning runoff, drift, and excessive foliage destruction; and the ability to recognize target organisms; and the mode of action of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their pesticide application activities in adjacent areas adjacent to target sites and communities.

005.02B(8) Structural/health-related pest control. Applicators ~~must~~ shall demonstrate a practical knowledge of the following: Control control of pests in and around structures. The applicator shall demonstrate practical knowledge of: household type pests such as cockroaches, ants, silverfish, spiders, food and fabric pests, mice, rats, bats, and other occasional invaders that infest structures, stored products, and food preparation or processing areas such as kitchens, cafeterias, or snack bars; the conditions conducive to pest infestations and selection of appropriate control procedures for each situation. Applicators shall demonstrate knowledge of risks associated with pesticide usage in occupied structures and near food products. ~~Since human exposure to humans~~, including babies, children, pregnant women, and elderly people is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition including continuous exposure in the various situations encountered in this category.

005.02B(8)(a) Health related pest control. ~~Because health-related pest control~~ Insects and other pests that create health issues for humans and pets such as vector diseases, bed bugs and fleas may involve outdoor applications for those pests on individual property. ~~, applicators~~ Applicators must ~~also~~ demonstrate practical knowledge of environmental conditions particularly related to this activity, since outdoor applications can carry off-site by drift or runoff . Applicators shall demonstrate knowledge of the risks involved with handling and use of ~~these pesticides~~ used indoors and in conjunction with structural pest control, and the appropriate application equipment to be used.

005.02B(8)(b) Bird control. Applicators shall demonstrate practical knowledge of: protected and unprotected pests, birds, and conditions conducive to bird problems; applicable laws and regulations protecting birds and the actions required in order to control protected pest species; bird control methods and the hazards associated with secondary poisoning of nontarget organisms.

005.02B(8)(c) Control of mice, rats and other vertebrate pests (not including birds) which are invading structures. Applicators shall demonstrate practical knowledge of: vertebrate pest animals other than birds and the conditions conducive to infestation and damage by such vertebrate animals; all applicable laws and regulations governing the control and protection of such animals; ~~and~~ the actions require to control protected or endangered animals; methods of control of pest animals; ~~;~~ and the effects of such control on nontarget organisms and other potential effects on the environment.

~~005.02B(8)(a)~~ 005.02B(8)(d) Wood Destroying Organisms (excluding structural fumigation). Applicators shall demonstrate practical knowledge of: structural wood destroying organisms such as beetles, termites, carpenter ants, and fungi, conditions conducive to infestation, the ability to select, calibrate, and use appropriate application equipment and procedures including ~~dates~~, rodding and trenching, topical application of pesticides, and local injection of specially labeled wood treatments in infested wood, such as dimension lumber, pilings, and other structural wood. The applicator shall demonstrate knowledge of new control technology such as baits and insect growth regulators. Applicators shall demonstrate knowledge of environmental and health hazards associated with the use of pesticides used for wood destroying pest control. Applicators shall demonstrate knowledge of the risks involved with handling and use of these pesticides and the appropriate measures to be taken to reduce exposure to humans and pests residing in the infested structure. ~~application equipment to be used.~~

005.02B(9) Public health pest control. Applicators shall demonstrate practical knowledge of: ~~Vector disease~~ vector disease transmission as it relates to and influences application programs; recognition of the wide variety of pests involved, an understanding of appropriate vector life cycles and habitats as a basis for control

strategy; the great variety of environments ranging from streams to those conditions found in buildings; and the importance and employment of such nonchemical control methods as sanitation, waste disposal, exclusion, and drainage. Applicators shall also be aware of all ~~regulator~~ regulatory requirements for re-entry precautions and warnings. ~~Swimming pool pest control. Applicators shall demonstrate practical knowledge of: undesirable microorganisms infesting swimming pools, and their possible health and environmental effects; the pesticides (antimicrobial) used, their effects on humans and the environment, and their compatibility with other pool chemicals; water circulation and pesticide dispersal systems; and shall be able to demonstrate expertise in water testing and ability to make required adjustments to maintain the necessary chemical balance.~~ Pest control in cooling water systems. Applicators shall demonstrate practical knowledge of the different cooling water systems used to transfer and dissipate heat. They shall demonstrate expertise in identifying and analyzing microbial problems and in selecting the appropriate anti-microbial agents in disbursing systems to maintain the micro-organisms at tolerable levels. Applicators shall demonstrate practical knowledge of: the different micro-organisms that contaminate equipment in different environmental sites, such as medical, dental, educational, institutional breeding, and food processing facilities; the different chemicals used as gases to sterilize equipment with specific chambers or as room disinfectants in enclosed spaces, and the possible hazards associated with the use of such gases; and the different chemical agents used as cleaning and anti-microbial agents to disinfect specific areas within a structure.

~~005.02B(9)(a) Chlorine Products Use. For swimming pool pest control using chlorine products declared as restricted-use pesticides, the applicator shall demonstrate practical knowledge of undesirable microorganisms infesting swimming pools and their possible health and environmental effects; the pesticides/anti-microbials used, their effects on humans and the environment, and their compatibility with other pool chemicals; water circulation and pesticide disbursal systems; and shall be able to demonstrate expertise in water testing and ability to make required adjustments to maintain the necessary chemical balance in the water.~~

~~For pest control in cooling water systems, industrial or institutional disinfection, or sanitizing using chlorine products declared as restricted-use pesticides, the applicator shall demonstrate knowledge of the different systems and~~

~~methods used to sanitize or disinfect mechanical, structural, or physical surfaces including medical tools, food processing sites, cooling towers, and others which may be declared restricted by the U.S. Environmental Protection Agency, but not limited to these sites. The applicator shall demonstrate knowledge of the risks and hazards associated with the use of pressurized gas formulations of chlorine.~~

005.02B(10) Wood preservation. Applicators in this category shall demonstrate practical knowledge of: conditions for which a wood preservative is used; all applicable treating and testing equipment; methods of applying wood preservatives and factors influencing their effectiveness; potential hazards to human health and the environment, including safety procedures and equipment to minimize exposure and first aid in the event of accidents; waste disposal as well as proper handling of spills, and the need for informing purchasers of treated wood products of the precautions they should take for handling, use, and disposal of treated wood products.

005.02B(11) Structural Fumigation. Applicators shall demonstrate practical knowledge of: conditions requiring the application of gaseous or solid fumigants and selection of the most appropriate fumigation methods to use; fumigation equipment used, including application, monitoring, testing, calculating, and personal protective equipment; and the risks involved with the use of fumigants. Applicators shall demonstrate ability to release, distribute, and maintain the correct fumigant concentrations for the products/structure being fumigated under varying conditions, and to completely aerate the fumigant. Applicators shall demonstrate knowledge of the fumigant management plan concept and why it is important to review and revise plans before every new fumigation.

005.02B(12) Aerial pest control. Applicators shall demonstrate practical knowledge of equipment calibration and maintenance, and the avoidance of problems associated with aerial application such as drift and nontarget injury. Applicators shall demonstrate practical knowledge of: crops grown and the specific pests of those crops on which they may be using restricted-use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, nontarget injury and community problems resulting from the use of restricted-use pesticides in agricultural areas.

Applicators shall also demonstrate practical knowledge of: a wide variety of environments since rights-of-way can traverse many different terrains, including waterways; problems concerning runoff, drift, and excessive foliage destruction; ~~the~~ and ability to recognize target organisms; ~~and~~ an understanding of the mode of action of herbicides and the need for containment of these pesticides within the right-of-way target area, and the impact of their application activities in adjacent areas and communities.

005.02B(13) Wildlife Damage Control. Applicators ~~The applicator~~ shall demonstrate practical knowledge of protected and unprotected vertebrate pests; applicable laws and regulations protecting pests and vertebrates; methods of control of pest animals; and the potential effects of such control on humans, non-target organisms, and the environment. Applicators shall demonstrate a knowledge of the various methods of monitoring target sites for non-target animals, creating and following transect monitoring protocols and alerting the proper authorities when non-target animals are impacted by the control program.

005.02B(14) Subcategories for Regulatory Work, Demonstration or Research ~~Demonstration/Research and Regulatory Work.~~

005.02B(14)(a) Demonstration/Research. Persons researching and demonstrating the safe and effective use of pesticides to other applicators and the public shall be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration and practical knowledge of problems, pests, and population levels appearing in each demonstration situation is required. Further, the applicator shall demonstrate an understanding of pesticide/organism interactions and the importance of integrating pesticide use with other control methods. The applicator doing demonstration pest control work or conducting field research or method development work with restricted-use pesticides shall possess knowledge of all of the general standards detailed earlier in subsection 005.01. In addition, they shall meet the specific standards of competency required for the particular category of work they are undertaking. ~~under this plan for any section as may be applicable to the particular activity.~~

005.02B(14)(b) Regulatory Work. Applicators shall demonstrate practical knowledge of regulated pests,

including applicable laws relating to the quarantine and other regulation of pests and the potential impact on the environment of restricted-use pesticides used in suppression and eradication programs. The applicator shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. The applicator's knowledge shall extend beyond that required by their immediate duty since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgment shall be made in new situations.

005.02C Continuing education units (CEUs) may be used as a method of recertification for commercial and noncommercial applicators. Partial CEU credit may be provided by the department to applicators for those approved educational programs that satisfy a portion of the required recertification topics when such education programs are received prior to the expiration of the certified applicators' license. CEUs may be available for recertification on programs offered or sponsored by the University, trade organizations, associations, and commercial enterprises. All CEU programs must be approved in advance by the department and are subject to the availability of resources the department has to monitor such programs.

005.03 Private Applicators. ~~Private applicators~~ Individuals using and/or supervising the use of restricted-use pesticides in the production of agricultural commodities, on their own property, property under their control, or property owned or under the control of their employer are included in this group. This ~~category~~ type of applicator license also includes individuals ~~private applicators~~ using or supervising the use of restricted-use pesticides on animals; and the use of restricted-use pesticides for soil or grain fumigation in the production or storage of an agricultural commodity they have produced, and the use of gaseous or solid fumigants or other poisons for the control of vertebrate pests infesting rangeland or pastures owned by them or under their control. Those private applicators using a restricted-use pesticide through an irrigation system must also be licensed according to the Nebraska Chemigation Act, Neb. Rev. Stat. §§46-1101 through 46-1148. ~~They shall demonstrate a practical knowledge of equipment associated with chemigation including calibration techniques and use of a backflow prevention device to prevent contamination of water supplies. They shall demonstrate knowledge of labeling requirements of products registered for chemigation, including posting requirements. Further, they shall demonstrate knowledge of the appropriate use of personal protective equipment associated with this type of application.~~ Private applicators applying restricted-use pesticides by fixed or rotary wing aircraft in the production of or in support of the production of agricultural commodities shall be required to meet the same standards of competency and be licensed as a commercial or

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noncommercial applicator. Such applicator shall demonstrate practical knowledge of equipment calibration and maintenance, preharvest intervals, re-entry intervals, phytotoxicity, prevention of drift, and potential for environmental contamination and nontarget injury.

005.03A Categories and subcategories. There are no separate categories or subcategories for private applicators, other than that for aerial pesticide application, in which case the department shall issue a private applicator license with that category listed, once the applicator has demonstrated competency as identified in 25 NAC 2-005.03.

005.03B Standards of Competency. As a minimum requirement for licensure, a private applicator must possess a practical knowledge of the pest problems and pest control practices associated with that person's agricultural operations; proper storage, use, handling and disposal of pesticides and containers; and related legal responsibilities. This practical knowledge includes the ability to:

005.03B(1) Recognize common pests to be controlled and damage caused by them.

005.03B(2) Read and understand the label and labeling information including the common name of pesticides applied; pest(s) to be controlled, timing and methods of application; safety precautions; ~~any pre-harvest and restricted entry intervals or re-entry restrictions;~~ and any specific disposal procedures.

005.03B(3) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances, taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.

005.03B(4) Recognize local environmental situations that must be considered during application to avoid off-site movement of the pesticide by runoff or drift or contamination of non-target sites.

005.03B(5) Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

005.03B(6) Understand and comply with rules and regulations relating to worker protection standards, the endangered species protection program, and ground and surface water protection.

005.03B(7) The applicator shall demonstrate practical knowledge of the use of personal protective clothing and equipment for fumigation, creating and following a fumigation management plan, general safety procedures, including posting and re-entry, and aeration. Further, they shall demonstrate knowledge of emergency procedures and the various application and emergency response techniques appropriate to various situations.

005.04 Noncertified Applicators. ~~An~~ Any individual required to be a licensed certified applicator may use pesticides as a noncertified applicator for only one consecutive sixty day period of time in the noncertified applicator is 60 days under the supervision of a licensed certified applicator pursuant to the requirements of the Act, applies to the department within ten days of making the first pesticide use for which a license is required, is provided training by the certified licensed supervisor, is provided with the labels for all pesticides used, and is in voice or electronic communications such that the certified licensed applicator can be physically on-site should the need arise within a reasonable period of time..

005.04A The verifiable, detailed guidance on how to ~~conduct pesticide~~ use pesticides provided by the supervising licensed certified applicator shall include a written outline of training or set of instructions that adequately informs the noncertified applicator about the basic responsibilities of his or her duties, so the noncertified applicator is confident in safely applying pesticides. Training shall include, but need not be limited to:

005.04A(1) Equipment calibration and operation;

005.04A(2) Personal protective equipment; and

005.04A(3) Directions for use specified on the product label.

005.04B The supervising licensed certified applicator shall provide the noncertified applicator with a copy of the labels of all pesticide products to be used. The supervising applicator shall also determine the level of experience and knowledge of the noncertified applicator, provide verifiable, detailed guidance on how to conduct each individual pesticide use performed under his or her direct supervision, and accompany the noncertified applicator to at least one site which would be typical for each type of pesticide use that the noncertified applicator performs.

005.04C The noncertified applicator shall sign the outline or training attachment acknowledging receipt and understanding of such guidance.

005.04D The voice or electronic means that the supervising licensed certified applicator shall be accessible by can be any form of communication in standard use that can adequately summon the supervising licensed certified applicator to the site of application and provide for a two-way conversation. Examples of adequate forms of electronic means shall include telephone, or two-way radio and instant electronic messaging, but not answering machines, fax machines or pagers.

005.04E The reasonable period of time that it would take the supervising licensed certified applicator to be physically at the application site shall be three hours, starting at the time the supervising applicator is contacted by the noncertified applicator and ending when the supervising applicator arrived on the site of the noncertified applicator's pesticide use.

005.05 Training, Testing and Application Requirements

005.05A Application for License. Any person applying for a Nebraska Pesticide Applicator License must do so by submitting required information on a form provided by the department. Such information may include the applicant's name, address, telephone number, date of birth, type of license and category for which the application is being submitted. No license may be issued unless the department receives the required information. No license will be issued until the applicant has paid the required license processing fee prescribed in 25 NAC 2-004. Under an executive order issued by the Governor of Nebraska, the department has been directed to offer military personnel who were serving active duty during the period of time they would have otherwise renewed their applicator certification, a one-year extension on the license. The department requires credible evidence from the applicant to verify their military active duty status.

005.05B License Renewal Requirements. Any person possessing a current Nebraska pesticide applicator license can renew the license prior to the expiration date by attending a training session approved by the department, or by passing the examinations required for the type of license and categories covered by the license. Any person possessing an expired license may only renew the license by taking the necessary examinations for the license, or in the case of a private applicator license, attending a training session approved by the department or completing one of the training programs offered by the University of Nebraska Pesticide Safety Education Program. Attending training to obtain or renew an applicator license is not mandatory, because testing is always an option. Any person attending recertification training will be required to attend the entire training program, and if a department proctor determines

the applicant is spending too much time outside of the meeting, is authorized to dismiss the person from the training session.

005.05C License Testing Requirements. Nebraska pesticide applicator licenses are renewed every three years, therefore it is imperative that applicants fully comprehend and retain the required information leading to their competency. For this reason, all electronic communication devices are to be turned off during the training and/or testing session. Personal calculators are allowed in testing sessions so long as they are not also able to communicate with other devices outside of the testing session. Persons attending training or testing will be allowed to use electronic communication devices during breaks, but must turn off the device upon re-entering the training or testing room.

005.05D Cheating. Any person determined or suspected of cheating by the department's proctor while taking an examination will be asked to terminate the test session and return at a later date to retake the examination. Repeat offenses may result in the department barring the applicant from future examinations, thus preventing the applicant from obtaining a license. Cheating on an examination shall include, but is not limited to; using electronic devices to communicate with other individuals or devices, using study materials during the examination, communicating with other testers in the test session by any means, exchanging examination booklets with other testers, using a copied or stolen examination booklet before or during the examination, photocopying, photographing, or otherwise duplicating the test booklet in whole or in part, or using any other method intended to defeat the purpose of testing the personal knowledge and competence of the applicant to apply pesticides. Any discovery by the department that applicants for a pesticide applicator license are using or have used electronic devices (other than calculators) to aid in completing the examinations will be required to surrender such device to the department proctor, and could potentially be dismissed from the testing session. The department proctor may, at their discretion, return such device to the applicant upon completion of the examination.

006 Record Keeping.

006.01 Private applicators shall record the following information on the application of all restricted-use pesticides, complete the record within 14 days of the application and maintain the record for a period of three years from the date of the application:

006.01A The brand or product name and the EPA registration number of the pesticide that was applied;

006.01B The total amount of the pesticide applied;

006.01C The location of the application, the size of area treated, and the crop, commodity, stored product, or site to which a pesticide was applied. The location of the application may be recorded using any of the following designations:

006.01C(1) County, range, township, and section;

006.01C(2) An identification system utilizing maps and/or written descriptions which accurately identifies location, such as global positioning system locators;

006.01C(3) An identification system established by a USDA agency which utilizes maps and a numbering system to identify field locations; or

006.01C(4) The legal property description.

006.01D The month, day, and year on which the pesticide application occurred;

006.01E The name and certification number of the certified applicator who applied or who supervised the person making the application;

006.01F Applications of pesticides made on the same day in a total area of less than 1/10 of an acre require the following elements be recorded:

006.01F(1) Brand or product name and EPA registration number;

006.01F(2) Total amount applied;

006.01F(3) Location must be designated as "spot application;" with an indication of the section, township, range and county of the target site and

006.01F(4) The date of application.

006.02 Commercial and noncommercial applicators shall record the following information on the application of restricted-use pesticides. Commercial applicators applying structural pest control pesticides shall also record the following information on all general use pesticide applications made for those purposes. Additionally, it is recommended that commercial applicators applying general use pesticides for lawn care purposes shall also keep such records. All such information shall be recorded within 48 hours of the pesticide application

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and be kept for a minimum of three years following the date of application. Each commercial applicator, noncommercial applicator, or each firm employing a commercial or noncommercial applicator shall keep and maintain at their principal place of business and provide such record to the customer or person contracting for the application on their request, within 48 work hours of the request, true and accurate information as outlined below:

006.02A Name and address of the person for whom the pesticide was applied.

006.02B Name, address, and certified applicator number of person making the application. Where a noncertified applicator makes the application, include both the noncertified and supervising applicator information.

006.02C Location or address of the pesticide application.

006.02D Target pest(s) i.e., specific common name of type of insect, weed, or disease. Broad general names of pests such as “grass”, “weeds” or “insects” are not acceptable.

006.02E Site of application i.e., specific crop or commodity, type of field, type of surface, etc.

006.02F Day, month, and year of application.

006.02G Initial starting time of application.

006.02H Trade name and EPA registration number of the pesticide applied.

006.02I Rate of pesticide applied per unit of measure, i.e., pounds per acre, ounces per 1,000 square feet, etc. For spot treatment, indicate mixture rates of the applied concentration such as 1 ounce per gallon.

006.02J Total amount of pesticide applied to site.

006.02K ~~Area or size~~ Size of treated area or site, i.e., acres, cubic feet, square feet, linear feet, crack and crevice, trap or bait placement, or spot treatment.

006.02L Method of disposal of unused pesticide. If no unused pesticide remained, records should indicate such.

006.02M It is recommended that records be kept of estimated wind direction and velocity at the time of application. Where wind direction and

velocity change during the course of application, average wind speed and general direction may be used.

006.02N It is recommended that records be kept of estimated ambient temperature at time of application. The temperature may be taken at the start of the application. In cases of long-term applications, average temperature or periodic temperature may be used. Temperature should be taken of the most appropriate substrate affecting the pesticide application. For aerial or ground/surface applications, air temperature should be recorded. For aquatic applications, water temperature should be recorded. For soil or grain fumigation, soil or grain temperature should be recorded.

006.03 Dealers. Each person who distributes restricted-use pesticides in the state shall keep a record of each transaction involving a restricted-use pesticide for a period of 36 months from the date of the transaction. Such records shall be made within two working days of the transaction and include the following information:

006.03A The name and address (residence or principal place of business) of the person to whom the restricted-use pesticide is made available. No dealer may make a restricted-use pesticide available to an uncertified person unless he or she can document that the distribution is to a licensed dealer or the restricted-use pesticide will be used by a certified applicator with a current and correct license for the pesticide. Such documentation shall include all information required in subsections (B) and (C) below.

006.03B The name and address (residence or principal place of business) of the certified applicator or dealer who will use the restricted-use pesticide if different from paragraph 006.03A above;

006.03C The certified applicators' ~~certification~~ license number or dealer license number, the state or other governmental ~~unit~~ entity that issued the certification document, the expiration date of the certification or license and the categories in which the applicator is certified if appropriate;

006.03D The product name, EPA registration number, and the special local need registration number, if any, on the label of the pesticide;

006.03E The quantity of the pesticide made available for use in the transaction;

006.03F The date of the transaction; and

006.03G The written agreement between the licensed certified applicator and the uncertified person delivering the restricted-use pesticide to the certified applicator, as specified in §2-2635(3)(e) of the Pesticide Act.

007 Fines and Penalties. The department case review process will determine the appropriate fine or penalty for each violation of the Pesticide Act in accordance with §2-2626(9), §2-2650 and any other applicable provisions of the act.

007.01 When it is determined that an administrative fine is an appropriate penalty for a violation of the Pesticide Act, the actual amount of such administrative fine shall be calculated by determining the base fine and making the necessary adjustments for gravity and the size of business as set forth in this section. The department may, however, issue any fine at the statutory maximum for any egregious violation. The base fines established for the specific violations of the Pesticide Act as set forth in Neb. Rev. Stat. §2-2646 are as follows:

007.01A To distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through a point outside this state, any of the following: A pesticide that has not been registered or whose registration has been canceled or suspended under the Pesticide Act; a pesticide that has a claim, a direction for its use, or labeling that differs from the representations made in connection with its registration; a pesticide that is not in the registrant's or manufacturer's unbroken immediate container and that is not labeled with the information and in the manner required by the act and any regulations adopted under the act; a pesticide that is adulterated; a pesticide or device that is misbranded; a pesticide in a container that is unsafe due to damage; a pesticide which differs from its composition as registered; or a pesticide that has not been colored or discolored as required by the Pesticide Act or the federal act.

007.01A(1) Base fine for a first violation is \$1,000.

007.01A(2) Base fine for a subsequent violation is \$2,000.

007.01B To detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for by the Pesticide Act or a rule or regulation adopted under the act;

007.01B(1) Base fine for a first violation is \$1,000.

007.01B(2) Base fine for a subsequent violation is \$3,000.

007.01C To add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of the act or any rule or regulation adopted and promulgated under the act;

007.01C(1) Base fine for a first violation is \$1,000.

007.01C(2) Base fine for a subsequent violation is \$4,000.

007.01D To use or cause to be used a pesticide contrary to the act, to the labeling of the pesticide including use of a pesticide at any dosage, concentration or frequency greater than specified or recommended on the labeling unless the labeling allows the greater dosage, concentration or frequency, or to a rule or regulation of the department limiting the use of the pesticide, except that it shall not be unlawful to (a) ~~apply~~ use a pesticide at any dosage, concentration, or frequency less than that specified or recommended on the labeling ~~if unless~~ the labeling does not specifically prohibit deviation from the specified or recommended dosage, concentration, or frequency, or, if the ~~product~~ pesticide is a termiticide, it is not used at a rate below the minimum concentration specified or recommended on the label for preconstruction ~~treatment~~ treatments, or if preconstruction treatments are not listed on the label, then the minimum rate used must not be less than the minimum specified on the label for post-construction treatments, (b) ~~apply~~ use a pesticide against any target pest not specified on the labeling if the ~~application~~ use is ~~to for~~ the crop, animal, or site specified or recommended on the labeling, ~~unless and~~ the labeling does not specifically states state that the pesticide may be used only for the pests specified or recommended on the labeling, (c) employ any method of ~~application~~ use not prohibited by the labeling ~~unless if~~ the labeling does not specifically states state that the product may be ~~applied~~ used only by the methods specified or recommended on the labeling, the method of use does not more than minimally increase the exposure of the pesticide to humans or the environment, (d) mix a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling if such mixing is consistent with the methods of application specified or recommended on the labeling and does not more than minimally increase the exposure of the pesticide to humans or the environment, (e) use a pesticide in conformance with section 136c, 136p, or 136v of the federal act or section 2-2626, or (f) use a pesticide in a manner that the director determines to be consistent with the purposes of the Pesticide Act;

007.01D(1) Base fine for a first violation is \$2,500.

007.01D(2) Base fine for a subsequent violation is \$5,000.

007.01E To handle, transport, store, display, or distribute a pesticide in a manner that violates any provision of the act or a rule or regulation adopted and promulgated under the act;

007.01E(1) Base fine for a first violation is \$1,000.

007.01E(2) Base fine for a subsequent violation is \$2,000.

007.01F To use, cause to be used, dispose of, discard, or store a pesticide or pesticide container in a manner that the person knows or should know is likely to adversely affect or cause injury to humans, the environment, vegetation, crops, livestock, wildlife, or pollinating insects; likely to pollute a water supply or waterway; or a violation of the Environmental Protection Act or a rule or regulation adopted pursuant to the act;

007.01F(1) Base fine for a first violation is \$4,000.

007.01F(2) Base fine for a subsequent violation is \$5,000.

007.01G To use for the person's advantage or reveal, other than to a properly designated state or federal official or employee, to a physician, or in an emergency to a pharmacist or other qualified person for the preparation of an antidote, any information relating to pesticide formulas, trade secrets, or commercial or financial information acquired under the Pesticide Act and marked as privileged or confidential by the registrant;

007.01G(1) Base fine for a first violation is \$1,000.

007.01G(2) Base fine for a subsequent violation is \$2,000.

007.01H To commit an act for which a certified applicator's license may be suspended, modified, revoked, or placed on probation under section 2-2644 whether or not the person committing the act is a licensed certified applicator;

007.01H(1) Base fine for a first violation is \$1,000.

007.01H(2) Base fine for a subsequent violation is \$2,000.

007.01I To knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide in a manner that causes bodily injury to a human or that pollutes ground water, surface water, or a water supply;

007.01I(1) Base fine for a first violation is \$5,000.

007.01I(2) Base fine for a subsequent violation is \$5,000.

007.01J To fail to obtain a license or to pay all fees and penalties as prescribed by the act and the rules and regulations adopted and promulgated pursuant to the act;

007.01J(1) Base fine for a first violation is \$1,000.

007.01J(2) Base fine for a subsequent violation is \$2,000.

007.01K To fail to keep or refuse to keep and make available for examination and copying by the department all books, papers, records, and other information necessary for the enforcement of the act;

007.01K(1) Base fine for a first violation is \$1,000.

007.01K(2) Base fine for a subsequent violation is \$2,000.

007.01L To hinder, obstruct, or refuse to assist the director in the performance of his or her duties;

007.01L(1) Base fine for a first violation is \$2,000.

007.01L(2) Base fine for a subsequent violation is \$5,000.

007.01M To violate any state management plan or pesticide management plan developed or approved by the department;

007.01M(1) Base fine for a first violation is \$1,000.

007.01M(2) Base fine for a subsequent violation is \$5,000.

007.01N To distribute or advertise any restricted-use pesticide for some other purpose other than in accordance with the Pesticide Act and the federal act;

007.01N(1) Base fine for a first violation is \$1,000.

007.01N(2) Base fine for a subsequent violation is \$4,000.

007.01O To use any pesticide which is under an experimental-use or emergency-use permit which is contrary to the provisions of such permit;

007.01O(1) Base fine for a first violation is \$2,000.

007.01O(2) Base fine for a subsequent violation is \$5,000.

007.01P To fail to follow any order of the department;

007.01P(1) Base fine for a first violation is \$2,000.

007.01P(2) Base fine for a subsequent violation is \$5,000.

007.01Q ~~Except as authorized by law, to knowingly or intentionally use, cause to be used, handle, store or dispose of a pesticide on property without the permission of the owner or lawful tenant.~~

007.01Q(1) Base fine for a first violation is \$2,000.

007.01Q(2) Base fine for a subsequent violation is \$5,000.

007.01Q 007.01R To knowingly falsify all or part of any application for registration or alter or falsify all or part of a license ~~licensing~~ or any other records required to be maintained pursuant to the Pesticide Act; and

007.01R(1) Base fine for a first violation is \$2,000.

007.01R(2) Base fine for a subsequent violation is \$5,000.

~~007.01R~~ 007.01S To violate any other provision of the act.

007.01S(1) Base fine for a first violation is \$1,000.

007.01S(2) Base fine for a subsequent violation is \$2,000.

007.02 Gravity adjustment criteria. The base administrative fine may be changed by considering the gravity of harm of the violation and the gravity of misconduct of the person committing the violation. The specific numerical value will be assigned to each category as set forth in the following charts:

007.02A Gravity of harm.

Violation	Circumstances	Value
Pesticide	Toxicity - Category I pesticides, signal word "DANGER", restricted-use pesticides (RUP's).	2
	General-use pesticides, toxicity - Category II, signal word "WARNING", and Categories III and IV, signal word "CAUTION."	1
Harm to Human Health	Actual serious or widespread harm to human health.	5
	Potential serious or widespread harm to human health.	4
	Minor actual harm to human health	3
	Harm to human health is unknown.	2
	Minor potential harm to human health, neither serious nor widespread.	1-2
	Harm to human health is unknown	1
	No <u>actual or</u> potential harm to human health	0
Environmental Harm	Actual serious or widespread harm to the environment (e.g., <u>damage or contamination to crops, certified organic crops,</u> water, livestock, wildlife, wilderness, or other sensitive natural areas).	5
	Potential serious or widespread harm to the environment.	4
	Minor actual harm to the environment	3
	Harm to environment is unknown.	2
	Minor potential harm to the environment, neither widespread nor substantial.	1-2
	Harm to environment is unknown	1
	No <u>actual or</u> potential harm to the environment	0

007.02B Gravity of misconduct.

Violation	Circumstances	Value
Compliance History	Two or more prior violations <u>in previous three years</u> of FIFRA or state law, either similar or unrelated to current violation.	3
	One prior violation <u>in previous three years</u> of FIFRA or state law similar to current violation.	2
	One prior violation <u>in previous three years</u> of FIFRA or state law unrelated to current violation.	1
	No prior FIFRA or Nebraska Pesticide Act violation.	0
Culpability	Knowing or willful violation of the statute. Knowledge of the general hazardousness of the action.	4
	Violation resulting from faulty, careless, or negligent action.	3
	Culpability unknown.	2 1
	Violation was neither knowing or <u>nor</u> willful and did not result from faulty, careless, or negligent action.	0
Remedial Efforts	Violator voluntarily notified NDA of incident or violation.	-1
	Violator instituted steps to correct the violation immediately after <u>discovery or notification</u> of the violation.	-2
	Violator immediately notified NDA of incident and instituted steps to correct the violation.	-3
Financial Gain	Noncompliance with Pesticide Act has or would have resulted in significant financial gain for violator.	3
	No financial gain to violator as a result of violation.	0

007.02C To determine the total gravity value, the base fine shall be adjusted based on the total number of points calculated from 007.02A and 007.02B above and multiplying it by the gravity adjustment values.

Adjustments for Gravity

Total Gravity Value	Adjustment
3 or below	25% of base value
4-6	50% of base value
7-10	75% of base value
11 or above	100% of base value

007.03 To determine the actual administrative fine, the fine as determined in 007.02C above shall be multiplied by the appropriate value corresponding with the size of business criteria set forth below. In determining the amount of any fine, there shall be a rebuttal presumption that the gross revenue from all sources of any violator is over \$800,000.

Size of Business Criteria

Gross Revenue From All Sources	Multiplier Value
\$0-200,000	0.2
\$200,001-400,000	0.4
\$400,001-600,000	0.6
\$600,001-800,000	0.8
over \$800,001	1.0

007.04 Nothing in these regulations shall prevent the department from entering into a settlement agreement with any person violating the Pesticide Act or the rules and regulations adopted and promulgated under it which specifies a different fine or penalty than specified in the act or regulation.

008 Worker Protection Standards (Arid REI extension). The counties listed below have an annual average rainfall of 25 inches or more over a 25 year period and are not subject to the arid Restricted Entry Interval (REI) extension for organophosphate or methylcarbamate pesticides:

Adams
Antelope

Gage
Hall

Pierce
Platte

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Boone	Hamilton	Polk
Burt	Jefferson	Richardson
Butler	Johnson	Saline
Cass	Kearney	Sarpy
Cedar	Knox	Saunders
Clay	Lancaster	Seward
Colfax	Madison	Stanton
Cuming	Merrick	Thayer
Dakota	Nance	Thurston
Dixon	Nemaha	Washington
Dodge	Nuckolls	Wayne
Douglas	Otoe	Webster
Fillmore	<u>Pawnee</u>	York
Franklin		

009 Emergency Exemption Permit.

009.01 Upon satisfaction of the requirements of the Pesticide Act and the rules and regulations adopted and promulgated under it by an applicant, the department may allow the use of a pesticide under an emergency exemption. The department shall issue a permit to distribute the pesticide for the specific usages outlined on the permit. Such exemptions shall be contingent upon continued compliance by the ~~recipient~~ registrant of the pesticide with the provisions of the act and the rules and regulations.

009.02 The ~~recipient~~ registrant of an emergency exemption pesticide shall ensure that such pesticide shall be distributed only to those persons who have obtained a permit to distribute such pesticide in Nebraska.

009.03 Application. Any person wishing to distribute, including those persons only distributing to other dealers, an emergency exemption pesticide may make application to the department for a permit on forms provided by the department. Only persons holding such permits shall be allowed to distribute the pesticide for such use.

009.04 Issuance. The department may issue a an emergency exemption permit to applicants who have completed the application and who have agreed to abide by the conditions set out in 009.05 below. Permits shall be valid until the dates specified on the permit, unless sooner revoked by the department for a violation by the holder of the provisions of the act or the rules and regulations.

009.05 Conditions. All permits issued under 009.04 above shall be conditioned as followed:

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009.05A Only products approved ~~with~~ by the department pursuant to this rule and regulation shall be distributed for use and only for the uses identified on the permit.

009.05B Distribution shall only be made to persons holding an emergency exemption permit, or the end user of the emergency exempted pesticide.

009.05C No distribution shall in any way violate the ~~labeling~~ restrictions of the ~~product, label, or emergency labeling, of the pesticide which~~ The label and the emergency labeling shall be provided with the distribution of the pesticide.

009.05D No distribution shall be made to any person whom the department has determined has violated the provisions of this rule and regulation or has violated the provisions of any emergency exemption permit issued to that person.

009.05E Persons distributing pesticides under an emergency exemption permit shall maintain records of distributions for at least three (3) years following the effective date of the distribution. Such records shall be the same as those required for a restricted-use pesticide as set forth in 006.03 above. In addition, a final report shall be submitted to the Department of Agriculture of all distributions of the pesticide within 60 days following the end of the season or expiration of the permit.

009.06 Application Notification. The department shall be informed by any person that is aware of any adverse affects resulting from the use of the pesticide.

010 Technical Interpretations. Pursuant to ~~§2-2626(3)(f)~~ §2-2626(4)(f) of the Pesticide Act, the department may, as it deems necessary or appropriate, issue technical interpretations that provide further guidance and policy on the use of pesticides to minimize or mitigate potential or documented negative impacts on humans or the environment.

010.01 Such technical bulletins may address issues set forth in §2-2646(4) of the Pesticide Act, including:

010.01A The dosage, concentration, or frequency with which a pesticide is mixed, applied, or used;

010.01B The target pests that may or may not be listed on the pesticide label. Technical interpretations for target pests may include a determination of whether a particular target pest is or is not biologically related to one listed on a pesticide label.

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010.01C The method or manner by which a pesticide may be used or applied. The method of use or application may include, but not be limited to application equipment, engineering standards, or new technology not previously available or indicated on a pesticide label; and,

010.01D The manner by which a pesticide is mixed or blended with other components.

010.02 Technical interpretations shall provide guidance regarding use inconsistent with the pesticide label as set forth in 007.01D above.

011 Annotation. Neb. Rev. Stat. §§2-2622 to 2-2654 2-2659 (Cum. Supp. 2006, Supp. 2007 Reissue 2012 and LB 69 of 2013).

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