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Colorado Department of Agriculture

Plant Industry Division

Rules and Regulations Pertaining to the Administration and Enforcement of the Pesticide Applicators' Act

8 CCR 1203-2

Part 1. ~~Definition and Construction of Terms.~~ CONSTRUCTION OF TERMS, DEFINITIONS AND INCORPORATIONS BY REFERENCE.

1.01. As used in these Rules, the singular includes the plural, the masculine gender includes the feminine and neuter, and vice versa. All terms used in these Rules shall have the meaning set forth for such terms in the Act.

1.02. As used in these Rules, unless the context otherwise requires:

(a) "abut" means to join; to be contiguous, as where no other land, road, or street intervenes; "abut" includes two property sites that would otherwise be considered abutting, but for the fact that such sites are separated by an alley. As used herein, "alley" means a passage way within a block set apart for public use, vehicular travel, and local convenience to provide a secondary means of access to the rear or side of abutting lots or buildings.

(b) "category" shall include any sub-category thereof.

(c) "engaged in the business of applying pesticides for hire" means: the evaluation of pest problems; the recommendation of pest controls and evaluation of results; the mixing, loading or application of pesticides; and/or the soliciting, advertising, offering or contracting to do any of the above, in return for money or anything of value, including goods or services. Notwithstanding anything to the contrary in the foregoing, the rendering of consultation services by an individual in evaluating pest problems, recommending pest controls and/or evaluating results, shall not be deemed to constitute the application of pesticides for hire, if said individual is not affiliated with, or soliciting business for, any person or business entity which performs the mixing, loading or application of pesticides.

(d) "in the possession of" means in the physical possession of the applicator or in a location at the site of the application, such as a service vehicle, that is readily accessible to the applicator.

(e) "fumigant" means any substance which by itself or in combination with other substances emits or liberates a gas or gases, fumes or vapors, and which gas or gases, fumes or vapors when liberated and used will destroy vermin, rodents, insects, and other pests, but are usually lethal, poisonous, noxious, or dangerous to human life.

(f) "pasture" means land which is managed primarily for the production of forage for domestic livestock. Pasture typically receives intensive renovation and/or cultural treatments, such as tillage, fertilization, mowing, irrigation and weed control.

(g) "proof of medical justification" means a statement signed by a physician licensed to practice medicine in Colorado pursuant to Article 36 of title 12, C.R.S. which states

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I certify that the individual named above is a patient of mine and should be placed on the list of pesticide sensitive individuals. This individual has a documented sensitivity to certain pesticides and should not be exposed to them because of the reason(s) described below:

(h) "property damage" includes, but is not limited to, injury to domestic animals, livestock and economically important insects.

(i) "ready to use pesticide" means, any pesticide that requires no mixing or loading of a pesticide into a service container or other application device; such as but not limited to: aerosols and pre-mixed formulations in the original container.

(j) "structure" means any building, regardless of its design or the type of material used in its construction, whether public or private, vacant or occupied, the foundation thereof, and the adjacent outside areas, and shall also include but shall not be limited to warehouses, trucks, boxcars, boats, airplanes, other vehicles, or the contents thereof, and fumigation vaults.

(k) "use" means any and all aspects of the handling of pesticides from the time a pesticide container is opened until disposal of the pesticide container, including without limitation, the mixing, loading, application, spill control, and disposal of a pesticide or its container.

(l) "to use any pesticide in a manner inconsistent with labeling directions or requirements" includes, but is not limited to, for termiticides only, the use of a termiticide at any concentration less than that stated on the labeling.

(m) "agricultural commodity" means any plant, or part thereof, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

(n) "device" means any device for which licensure as a commercial applicator is required pursuant to § 35-10-118(9.5). C.R.S. For purposes of these Rules, use of a pesticide includes the use of any such device by a commercial applicator.

1.03. MATERIAL INCORPORATED BY REFERENCE DOES NOT INCLUDE ANY LATER AMENDMENTS OR EDITIONS OF THE INCORPORATED MATERIAL. COPIES OF MATERIAL INCORPORATED BY REFERENCE IN THESE RULES IS AVAILABLE FOR PUBLIC INSPECTION DURING REGULAR BUSINESS HOURS. THIS INCORPORATED MATERIAL MAY BE OBTAINED AT A REASONABLE CHARGE OR EXAMINED BY CONTACTING THE PESTICIDE SECTION CHIEF, DEPARTMENT OF AGRICULTURE, 305 INTERLOCKEN PARKWAY, BROOMFIELD, CO 80021. FURTHER, THE INCORPORATED MATERIAL MAY BE EXAMINED AT NO COST ON THE INTERNET AT:

14 CFR PART 137 (2017): HTTPS://WWW.ECFR.GOV/CGI-BIN/TEXT-IDX?SID=78202A2B282637D0353BEF1963D3EB97&MC=TRUE&NODE=PT14.3.137&RGN=DIV5

7 CFR PART 110 (2017): HTTPS://WWW.ECFR.GOV/CGI-BIN/TEXT-IDX?SID=341D0F40E8A82F23D37560D37F1D3795&MC=TRUE&NODE=PT7.3.110&RGN=DIV5

40 CFR § 156.10(H) (2017): HTTPS://WWW.ECFR.GOV/CGI-BIN/TEXT-IDX?SID=0BF63629A0295F907AD146FA19191798&MC=TRUE&NODE=SE40.26.156_110&RGN=DIV8

*Editing comments: Changes to this rule are indicated in **~~bold strikethrough~~** for removal and **BOLD, SMALL CAP, DOUBLE UNDERLINE** for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.*

29 CFR § 1910.1200 (2017): HTTPS://WWW.ECFR.GOV/CGI-BIN/TEXT-IDX?SID=86491CB903D67E9BBA95D83941202D06&MC=TRUE&NODE=SE29.6.1910_11200&RGN=DIV8

40 C.F.R., PART 172 (2017): HTTPS://WWW.ECFR.GOV/CGI-BIN/TEXTIDX?SID=6AC65677C44BBA253A0D63B16ED45E72&MC=TRUE&NODE=PT40.26.172&RGN=DIV5

40 C.F.R., PART 180 (2017: HTTPS://WWW.ECFR.GOV/CGI-BIN/TEXTIDX?SID=0EEE3CBC0A72651B5B0BF97FD64ABD54&MC=TRUE&NODE=PT40.26.180&RGN=DIV5

40 C.F.R., 152.25 (2017): HTTPS://WWW.ECFR.GOV/CGI-BIN/TEXTIDX?SID=0EEE3CBC0A72651B5B0BF97FD64ABD54&MC=TRUE&NODE=PT40.26.152&RGN=DIV5 #SE40.26.152_125

Part 2. The Licensing System.

Subpart A Commercial Applicators

2.01. A person engaged in the business of applying pesticides must be licensed as a commercial applicator under the Act. To be licensed or to renew a license as a commercial applicator, any designated qualified supervisor(s) must be licensed in good standing in the category for which a commercial applicator's license is sought.

2.02. A person not engaged in the business of applying pesticides is not required to be licensed as a commercial applicator under the Act. For example, a person who evaluates and/or recommends pest controls while not engaging in the business of applying pesticides or working for a person who engages in the business of applying pesticides is not required to be licensed under the Act.

2.03. Each applicant for a license shall submit a signed, complete, accurate, and legible application, on a form provided by the Commissioner, which shall include, at a minimum: the name and address of the business, the name under which the business will operate (the doing business as name), the name of the person who is the primary contact, the address and telephone number of the location where the applicator records are to be kept, the name and identification numbers of all qualified supervisors employed or designated by the business, and any other information required on the form.

2.04. In addition to the form approved by the Commissioner, each applicant for a license or applicant for renewal of a license, shall submit the license fee set by the Commissioner. If the license fee does not accompany the application, the application for license or renewal of a license may be denied.

2.05. Each person applying as a corporation or other entity, shall submit a certificate of good standing from the Secretary of State.

2.05.5. Each individual or sole proprietorship that applies for a license must provide all information and documents required by the Commissioner to verify lawful presence in the United States pursuant to Section 24-76.5-103, C.R.S. Failure to provide all such information and documents in the manner specified by the Commissioner shall be grounds for denial of an application for a license or renewal of an existing license.

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2.06. Each applicant shall submit to the Commissioner the name under which the business will operate. If the licensee operates under more than one name, each such name shall be listed with the Commissioner.

2.07. Beginning with license year 1994, the annual license fee for commercial applicators shall be $350.00.

2.08. Each applicant for renewal of a license shall annually submit a signed, complete, accurate, and legible application on a form provided by the Commissioner, which shall include, at a minimum: the name and address of the business, the name of the person who is the primary contact, the address and telephone number of the location where the applicator records are to be kept, the name and identification numbers of all qualified supervisors employed by the business, and any other information required on the form.

2.09. Each applicant for a license shall file evidence of liability insurance on forms provided by the Commissioner.

2.10. Each applicant for renewal of a license in all categories, shall have on file at the time of submission of an application for renewal of a license evidence of liability insurance which is in force at the time of application.

2.11. Each commercial applicator shall have on file with the Commissioner evidence of liability insurance on forms provided by the Commissioner at the time any pesticide application is performed.

2.12. Adequate Supervision:

(a) A licensee must have at least one qualified supervisor for every fifteen (15) technicians, of which no more than eight (8) may be unlicensed technicians. For purposes of the provision, the term "unlicensed technician" means a technician who does not have a certified operator license

(b) A responsible qualified supervisor must be available while any technician under their supervision is using a pesticide. For purposes of this provision, the term "available" means able to communicate verbally with the technician and the Department and to respond appropriately to any emergency.

2.13. A commercial applicator who conducts such business at two or more business locations shall obtain a license for each location at which it employs one or more permanent employees engaged in the application of pesticides for hire. For purposes of this paragraph, "business locations" means any physical location at or through which the functional operations of business regularly occur, including, but not limited to, financial transactions, arrangement of contracts, or assignment of work, and excluding buildings or locations used solely for storage of equipment or supplies or telephone answering services.

2.14. A commercial applicator may not apply pesticides aerially without an endorsement on its license by the Commissioner permitting such applications. In order to obtain such endorsement, the applicant or licensee shall present evidence that at least one pilot employed or to be employed by said applicant, currently holds a commercial agricultural aircraft operator certificate issued by the Federal Aviation Administration, U.S. Department of Transportation, pursuant to 14 CFR, part 137. If the employment of said pilot or pilots is terminated for any reason, the Licensee shall immediately cease aerial application of pesticides unless and until it is in compliance with this Rule.

2.15. A business not engaged in the business of applying pesticides for hire, and not licensed under the Act, may solicit and enter into a written contract which incidentally requires one or more pesticide applications only in accordance with the provisions of this Section. Examples of such contracts, but not by way of limitation, are maintenance and paving contracts. If such business hires a licensed commercial applicator to perform the pesticide application as a subcontractor, then the primary contractor need not itself be licensed under the Act. If the primary contractor does not hire a licensed commercial applicator to perform such applications, then the primary contractor must obtain a license prior to entering into the primary contract. Entry into any such contract that does not have an express written statement that the contractor will subcontract with a licensed commercial applicator to perform the pesticide application(s) called for in the contract, shall constitute a violation of § 35-10-117(1)(c), C.R.S. Failure to include such a statement in any solicitations, whether oral or written, to enter into such a contract shall constitute a separate violation of § 35-10-117(1)(c), C.R.S.

2.16. A commercial applicator not licensed in a category ("contractor") may solicit and enter into a written contract with a customer to perform pesticide applications in said category only if the contractor subcontracts with a commercial applicator licensed in said category ("subcontractor") to perform the pesticide application in that category. In this case, the subcontractor shall be responsible for all aspects of the application. If the contractor hires the subcontractor to perform the pesticide application, then the contractor need not itself be licensed in the category. If the contractor does not hire a subcontractor to perform such applications, then the contractor must obtain a license in said category prior to entering into any contract with a customer for any pesticide application in said category. Entry into any such contract that does not have an express written statement that the contractor will subcontract with a subcontractor licensed to perform the pesticide application(s) called for in the contract, shall constitute a violation of § 35-10-117(1)(c). C.R.S. Failure to include such a statement in any solicitation, whether oral or written, to enter into such a contract shall constitute a separate violation of § 35-10-117(1)(c), C.R.S.

2.17. A commercial applicator licensed in a category ("contractor") may enter into a contract with a customer to perform pesticide applications in said category. The contractor may subcontract with another commercial applicator licensed in the same category ("subcontractor") to perform the pesticide application under the primary contract. In this case, both the contractor and subcontractor shall be responsible for all aspects of the application. For example and not by way of limitation: both applicators are required to keep records of the application; both applicators are responsible for any notification required under the act or these Rules; and both applicators are responsible for the proper application of any pesticides.

Subpart B Registered Limited Commercial Applicators and Registered Public Applicators

2.18. Any person who in the course of conducting a business only in or on property owned or leased by the person or the person's employer ("limited commercial applicator") is engaged in applying restricted use pesticides, and any agency of the state, any county, city and county, or municipality, or any other local governmental entity or political subdivision ("public applicator") which applies restricted use pesticides shall register with the Commissioner.

2.19. An entity which does not apply restricted use pesticides but otherwise qualifies as a limited commercial applicator or a public applicator may register with the Commissioner.

2.20. A limited commercial applicator or public applicator which exclusively applies general use pesticides is not required to register with the Commissioner unless they have so designated in accordance with § 2.19.

2.21. Any limited commercial applicator or public applicator registered pursuant to the Act and these Rules shall be governed by the Act and these Rules for all pesticide applications including those involving general use pesticides.

2.22. The limited commercial applicator or public applicator shall designate on its application one or more individuals, who are or will be employed by it in the capacity of qualified supervisor, to take the examination for each category and subcategory for which the registration is sought.

2.23. To be registered as a limited commercial applicator or public applicator, the designated qualified supervisor must be licensed in good standing and must meet all qualifications including, but not limited to, the experience and/or educational qualifications set forth in these Rules for each of the categories in which he or she will take the examination. For purposes of this Section, the term "good standing" includes but is not limited to, the fact that the qualified supervisor's license has not expired pursuant to § 35-10-116 (1), C.R.S.

2.24. Each applicant for a registration shall submit a signed, complete, accurate, and legible application, on a form provided by the Commissioner, which shall include, at a minimum: the name and address of the applicant, the name of the person who is the primary contact, the address and telephone number of the location where the applicator records are to be kept, the name and identification numbers of all qualified supervisors employed by the applicant, and any other information required on the form.

2.25. In addition to the form approved by the Commissioner, each applicant for registration, shall submit the registration fee set by the Commissioner. If the registration fee does not accompany the application, the application for registration may be denied.

2.26. Each person applying as a corporation or other entity, shall submit a certificate of good standing from the Secretary of State.

2.27. The registration required pursuant to the Act shall expire on December 31 of the same year the registration is granted.

2.28. A registered limited commercial applicator or a registered public applicator may not apply pesticides aerially without an endorsement on its registration by the Commissioner permitting such applications. In order to obtain such endorsement, the limited commercial applicator or a public applicator shall present evidence that at least one pilot employed or to be employed by said limited commercial applicator or a public applicator, currently holds a commercial agricultural aircraft operator certificate issued by the Federal Aviation Administration, U.S. Department of Transportation, pursuant to 14 CFR, **p**Part 137 **(2017)** (AS INCORPORATED HEREIN BY REFERENCE). If the employment of said pilot or pilots is terminated for any reason, the limited commercial applicator or a public applicator shall immediately cease aerial application of pesticides unless and until it is in compliance with this Rule.

2.29. A limited commercial entity or a public entity may designate separate sections, divisions, agencies, or their equivalent to be registered.

2.30. Adequate Supervision:

a) A registered limited commercial applicator or a registered public applicator must have at least one qualified supervisor for every fifteen (15) technicians, of which no more than eight (8) may be unlicensed technicians. For purposes of the provision, the term "unlicensed technician" means a technician who does not have a certified operator license.

b) A responsible qualified supervisor must be available while any technician under their supervision is using a pesticide. For purposes of this provision, the term "available" means able to communicate verbally with the technician and the Department and to respond appropriately to any emergency.

2.31. If before the expiration of a registration, a registered limited commercial applicator or registered public applicator wants to withdraw registration, said applicator may withdraw from registration. Notice of withdrawal must be in writing and is not effective until 10 days from receipt by the Commissioner. If before the original expiration of a registration the applicator wants to be registered, the applicator must submit a new application and submit a new registration fee.

Subpart C Qualified supervisors and certified operators

2.32. A person working for a person who is or should be licensed as a commercial applicator, registered limited commercial applicator, or registered public applicator and who without supervision, evaluates pest problems, or recommends pest controls using pesticides, or uses any pesticide, or sells application services, or supervises others in any of these functions must be licensed as a qualified supervisor.

2.33. A person who applies any restricted use pesticide without the on site supervision of a qualified supervisor must be licensed as a certified operator.

2.34. Each qualified supervisor and certified operator applying for a license or the renewal of a license shall complete and file with the Commissioner an application, prior to the date of expiration of any current license on a form furnished by the Commissioner, and which contains, at a minimum, the following: the applicant's identification number, if any, his or her name, the name, address, telephone number, and license or registration number of his or her employer, if any, and any other information required on the form.

2.35. The Commissioner may require verification of any fact, including but not limited to, any experience or education claimed on any application, and may investigate the truthfulness and accuracy of any and all information submitted by an applicant.

2.36. Upon a showing of exceptional circumstances by an applicant, the Commissioner may waive part of the experience requirements specified in these Rules. The Commissioner may accept, with sufficient verification, valid relevant field experience obtained in this state or any other state.

2.37. Each applicant for license as a qualified supervisor or certified operator, shall take and pass a general examination and any examinations required for the category for which the applicant has applied.

2.38. Each individual who applies for a license must provide all information and documents required by the Commissioner to verify lawful presence in the United States pursuant to Section 24-76.5-103, C.R.S. Failure to provide all such information and documents in the manner specified by the Commissioner shall be grounds for denial of an application for a license or renewal of an existing license.

2.39. Except as provided in § 2.45 of these Rules, each applicant for a license as a qualified supervisor or certified operator shall pay a fee to be determined by the Commissioner. Said fee must be paid separately from any other fee, including but not limited to, any fee for examination as a qualified supervisor or certified operator or any fee for licensure as a commercial applicator.

2.40. The qualified supervisor(s) employed by a licensee shall be responsible for the complete supervision of all pest control recommendations, soliciting, mixing, loading, and application of pesticides for the licensee.

2.41. The anniversary date of a qualified supervisor's license or certified operator's license shall be the birth date of the licensee.

2.42. Both qualified supervisors and certified operators will be licensed by category and must take and pass both a general exam and a category specific exam.

2.43. In order for a licensed qualified supervisor or licensed certified operator to become licensed in additional categories, the applicant must take and pass the examination in the new category.

2.44. If a qualified supervisor possesses all of the qualifications for licensure as a qualified supervisor in an additional category for which such person is not licensed, except for the required experience, such person shall be licensed as a certified operator in such additional category without payment of the application fee for the certified operator's license.

2.45. If a licensed qualified supervisor or licensed certified operator applies for licensure in an additional category, said qualified supervisor or certified operator shall not be required to pay an additional application fee for licensure in a new category. The applicant shall be required to pay an examination fee.

2.46. Any category added after the qualified supervisor or certified operator is originally licensed or renewed shall expire on the date of expiration of the original license.

2.47. In order to qualify for renewal of a license, any licensed qualified supervisor or licensed certified operator must either take and pass the general exam and any category specific exams for his category or complete any continuing education required pursuant to part 4 of these Rules. Any renewal of a license shall be determined on a category basis. Any license that is not renewed on or before the expiration date of the license may be reinstated within one hundred eighty days after the expiration date upon:

(a) Application and payment of a reinstatement fee as determined by the Commissioner; and

(b) Proof that all renewal requirements have been satisfied as of the expiration date of the license.

2.48. An individual certified or licensed by another jurisdiction as a commercial pesticide applicator may obtain a certified operator license in Colorado without passing any examination, but only for the unexpired term of the certification or license issued by such other jurisdiction. Application for such licensure shall require proof of current certification or licensure in good standing in the other jurisdiction and payment of an application fee pursuant to § 2.39. Any application for licensure pursuant to this Section may be denied for any reason other than passage of any exam. If issued, said license shall expire on the expiration date of the certification or license issued by the other jurisdiction. Upon the expiration of the license issued pursuant to this Section, the individual may renew the certification or license issued by the other jurisdiction and re-apply to become a certified operator in Colorado as permitted by this § 2.48, or apply for a license in Colorado and satisfy all requirements therefore, including, but not limited to, taking and passing each examination applicable to such licensure.

Subpart D Private Applicators

2.49. Any person who uses or supervises the use of a restricted use pesticide for purposes of producing any agricultural commodity on property owned or leased by the applicator or the applicator's employer or, if the pesticide is applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person must be a licensed private applicator. The holder of a private applicator license is only authorized to use restricted pesticides for the purpose of producing an agricultural commodity as defined in Part 1, Rule 1.02(m).

2.50. Each applicant for a private applicator license or renewal of a license shall complete and file with the Commissioner an application on a form furnished by the Commissioner, and which contains, at a minimum, the following: the applicant's identification number, if any, his or her name, address, telephone number, photocopy of their identification, and any other information required on the form. Licenses issued by the Environmental Protection Agency prior to January 1, 2007 cannot be renewed.

2.51. The Commissioner may require verification of any fact, including but not limited to, type of agricultural commodity production claimed on any application, and may investigate the truthfulness and accuracy of any and all information submitted by an applicant.

2.52 Each applicant for a private applicator license shall take and pass an examination.

2.53 Each applicant for a private applicator license shall pay a fee to be determined by the Commissioner. Said fee must be paid separately from any other fee, including but not limited to, any fee for examination as a private applicator.

2.54. A licensed private applicator shall be responsible for the supervision of any unlicensed person working under his or her direction, who mixes, loads, or applies a restricted use pesticide, for purposes of producing any agricultural commodity on property owned or leased by the applicator or the applicator's employer. For the purposes of this Section, supervision of any unlicensed person working "under his or her direction" shall mean work performed by an individual acting under the instruction and control of a licensed private applicator, even if the licensed private applicator is not physically present at the work site at the time the work is performed.

2.55. The anniversary date of a private applicator license shall be the birth date of the licensee.

2.56 In order for a licensed private applicator to become licensed as a qualified supervisor or certified operator, the applicant must take and pass both a general exam and a category specific exam and meet any requirements outlined in Part 2, Subpart C of these Rules.

2.57 If a licensed private applicator applies for licensure as a qualified supervisor or certified operator, the private applicator shall be required to pay an additional examination fee and application fee for licensure.

2.58. In order to qualify for renewal of a license, a licensed private applicator must either take and pass the private applicator exam or complete any continuing education required pursuant to Part 4 of these Rules. A license that is not renewed on or before the expiration date of the license may be reinstated within one hundred eighty days after the expiration date upon:

(a) Application and payment of a reinstatement fee as determined by the Commissioner; and

(b) Proof that all renewal requirements have been satisfied as of the expiration date of the license.

2.59. An individual certified or licensed by another jurisdiction outside Colorado as a private applicator may obtain a Colorado private applicator license without passing any examination, but only for the unexpired term of the certification or license issued by such other jurisdiction. Application for such licensure shall require proof of current certification or licensure in good standing in the other jurisdiction and payment of an application fee pursuant to § 2.53. Said license shall expire on the expiration date of the certification or license issued by the other jurisdiction. Upon the expiration of the license issued pursuant to this Section, the individual may renew the certification or license issued by the other jurisdiction and re-apply to become a private applicator in Colorado as permitted by this § 2.59, or apply for a license in Colorado and satisfy all requirements therefore, including, but not limited to, taking and passing an examination applicable to such licensure.

2.60. Private pesticide applicator licensure classification: Category 401, Private Pesticide Applicator Pest Control, is for the application of restricted use pesticides for the purpose of producing any agricultural commodity on property owned or leased by the applicator or the applicator's employer or, when the pesticide is applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

Subpart E Licensure Actions, Suspension, Denial, Revocation

2.61. Any of the following actions shall constitute grounds for the suspension, restriction, refusal to renew, denial, or revocation of a license or certification, whether alone or in conjunction with violations of any provision of the act or of any other provision of these Rules:

(a) The application of pesticides in a negligent or willful manner which creates, either by pesticide residue or by direct damage, a hazard to property, which shall include without limitation, crops, ornamental plants, and animals (including economically important insects).

(b) The application of pesticides in a negligent or willful manner which endangers human health.

(c) The creation of a situation from improper handling of pesticides, including spillage, leakage, vapors or disposal, which constitutes a hazard to the health, welfare or safety of any person, the general public, any animal or animals (including economically important insects), any crops, any ornamental plants, or the environment.

Part 6. Records.

Subpart A Recordkeeping Requirements for Commercial, Registered Limited Commercial and Registered Public Applicators

6.01. Licensed commercial applicators, shall maintain accurate and legible office records of each application of pesticides made for hire. Commercial applicators using devices shall maintain records in accordance with Part 15.07 of these Rules.

6.02. Registered limited commercial and registered public applicators shall maintain accurate and legible office records of each application of pesticides.

6.03. Except for device applications as provided in Part 6.01, such records shall include all of the following information:

(a) Name and address of person for whom application was made.

(b) Location where application was made, if different from number 6.03(a). The location of a field should be fully described. In the case of roadside weed control applications, the record should include the county or state road number and the portion of roadside treated, described by reference to mileage markers or prominent geological features such as road intersections, river or creek crossings, or the like.

(c) Target pest. This means the specific pest for which the application was made. A general term is acceptable only if the pesticide label specifically refers to that exact term (such as "broadleaf weeds").

(d) Site, crop, commodity or structure treated.

(e) Specific pesticide applied. This shall be accomplished by recording the EPA registration number of the pesticide product. The brand name of the pesticide product and the name and address of its manufacturer may also be included in this record.

(f) Dilution rate. This is the amount of formulated product or active material per unit of volume of carrier specified as such. In the case of a product applied out of the container without mixing, the entry should be "no dilution", "aerosol", or "RTU" (ready to use), as applicable.

(g) Application rate. This is the total gallons or pounds of the final tank mix applied per unit of area or volume. In the case of "crack and crevice" structural treatment, the entry should indicate "crack and crevice". The entry for a livestock application should indicate "dip" or "spray", as appropriate. In the case of an application of a pesticide labeled "spray until wet," "spray to runoff," or the like, the entry should indicate the nature of the application in language consistent with the label directions.

(h) Carrier, if other than water.

(i) Date and time of application. The record shall indicate the time, within at least one-half hour accuracy, when the application was started or stopped. Each applicator's records shall be kept consistently and clearly, in such a manner as to allow ready determination as to whether a noted time indicates the beginning or end of the application. An entry merely stating "A.M." or "P.M." is not sufficient to comply with this Rule.

(j) Name of the person who made the application (i.e., technician, certified operator, qualified supervisor). If a restricted use pesticide application is performed by an applicator technician, the record of application shall include the names of both the technician and the responsible on-site qualified supervisor.

(k) Endangered Species Protection Bulletin for the county and month in which the application was made for any pesticide product used, when required by the label. If there is not an active Endangered Species Bulletin use limitation for the county and month in which the application was made, no Endangered Species Protection Bulletin is required to be maintained in the applicator's records. For purposes of complying with this subsection (k), a single Endangered Species Bulletin record may be applied to multiple applications that are subject to that Bulletin.

6.04. Any applicator performing wood destroying insect control, for the control of termites, shall keep, in addition to record keeping requirements outlined in Section 6.03 above, the following information:

(a) For all commercial pre-construction treatments, the licensee must maintain records of square footage treated per application site, flow rate of the application equipment, and

the start and stop time for the treatment. If a physical barrier is used, the square footage of the physical barrier shall be recorded and a diagram describing the installation shall be provided.

(b) Each post construction termite liquid and bait treatment record shall include:

(1) A diagram, blueprint, or building plat and a description of the structure or structures to be treated, including the following:

(a) Approximate measurements as accurately as practical;

(b) Areas of known current termite activity;

(c) Areas of known previous termite activity;

(d) Areas of known conditions conducive to termite activity;

(e) Areas to be treated and by what means, (i.e.: slab injection, trenching).

(2) A copy of the signed customer contract and any warranty information provided to the customer, including any job specific exclusions, limitations or amendments.

(3) An original or legible copy of the original label for any pesticide used.

(4) The signature of approval on the proposed treatment diagram by a qualified supervisor licensed in the wood destroying organism category who is employed by or associated with the applicator making the proposal.

(5) For termite baiting programs:

(a) The number and locations of baiting and monitoring stations to be installed;

(b) All service inspections of termite bait stations must be kept as part of that customer's service record and service frequency must be performed as recommended by the manufacturer's label requirements.

Subpart B Recordkeeping Requirements for Private Applicators

6.05. Licensed private applicators shall maintain accurate and legible records of each restricted use pesticide application in accordance with all regulations of the United States Department of Agriculture's federal pesticide recordkeeping requirements set forth in the Code of Federal Regulations, at 7 C.F.R., Part 110 ~~(2006)~~ **(2017)** (AS INCORPORATED HEREIN BY REFERENCE), incorporated herein by reference (later amendments not included). Pursuant to §35-10-111 of the Act, such records shall be retained for a period of two years from the date of the pesticide application.

Part 11. Storage.

Subpart A Storage Requirements for Commercial, Registered Limited Commercial, Registered Public Applicators

11.01. All commercial, registered limited commercial, or registered public applicators shall store pesticide concentrates and dilute mixtures using methods which are reasonably calculated to prevent the contamination of other products by means of volatilization, leakage, breakage or other causes, and which are reasonably calculated to avoid the creation of an unreasonable risk of harm to persons, property, domestic or wild animals, or the environment.

11.02. Pesticide storage areas shall be kept clean and orderly, and pesticide containers shall be positioned so that they are not exposed to unreasonable risk of damage to the containers or their labels.

11.03. Indoor pesticide storage areas shall be secured from access by unauthorized persons, including the general public, and locked when the building is unoccupied by an applicator or his employees.

11.04. Outdoor pesticide storage areas shall be fenced or walled, and locked. Pesticides and pesticide containers shall be covered or otherwise protected from the elements, in a manner which is reasonably calculated to minimize the risk of damage to labels, and to avoid the creation of an unreasonable risk of harm to persons, property or domestic or wild animals.

11.05. Pesticide storage areas shall be marked with a sign or signs, in letters at least one inch high, warning that pesticides are stored within and communicating the highest toxicity category any person may be exposed to within the storage area (i.e.: Danger, Danger skull and crossbones, Warning, Caution), such as: "Danger, Pesticide Storage, Authorized Personnel Only." Signage must also provide emergency contact information, in letters at least one half inch high and must state: "In case of emergency, contact: (name) at (telephone number)." Compliance with this Rule 11.05 is not necessary for any person who has marked their pesticide storage areas with signs that comply with local fire department requirements. Applicators must obtain written confirmation from the local fire department if no sign(s) is required and maintain this record for inspection by the department.

11.06. Each commercial, registered limited commercial, or registered public applicator storing pesticides shall inform the local fire department of the location of the pesticide storage, and shall provide the fire department with safety data sheets for all pesticides held at the location.

11.07. Each commercial, registered limited commercial, or registered public applicator who stores pesticides shall have available, at each storage location, in good working order, one or more fire extinguishers rated for chemical fires, and materials for use in cleaning up pesticide spills.

11.08. A service container that is not at all times in the immediate custody or control of a qualified supervisor, certified operator, or technician shall have prominently displayed thereon the following information from the label affixed to the pesticide's original container: the common name of each active ingredient, if there is such a common name, or the chemical name of each active ingredient; the EPA Registration Number; each and every human hazard signal word shown on the label, and the name of the commercial, registered limited commercial, or registered public applicator. For purposes of this Section 11.08, "service container" shall mean any container holding pesticide, whether in a concentrated or diluted form, other than the pesticide's original container, that is of a size and capacity that permits it to be carried or moved by only one individual, unaided by any tool or apparatus; and "human hazard signal word" shall mean those human hazard signal words required by the U.S. Environmental Protection Agency in its rules and regulations at 40 C.F.R. § 156.10(h) ~~(1995)~~ **(2017)** (AS INCORPORATED HEREIN BY REFERENCE), to be shown on the front panel of the label affixed to the pesticide's original container. Compliance with this Rule is not necessary if the service container is marked in compliance with the rules and regulations of the occupational safety and health administration, U.S. Department of Labor at 29 C.F.R. § 1910.1200 and appendices A through E, inclusive, thereto ~~(1995)~~ **(2017)** (AS INCORPORATED HEREIN BY REFERENCE), applicable to hazard communication for chemicals.

~~(a) The incorporation in this Section of the aforesaid regulations of the U.S. Environmental Protection Agency and the Occupational Safety and Health Administration, U.S. Department of Labor does not include any later amendments to or editions of such incorporated material.~~

~~(b) Information concerning the aforesaid incorporated regulations of the U.S. Environmental Protection Agency and the Occupational Safety and Health Administration, U.S. Department of Labor may be obtained from:~~

~~The Plant Industry Division~~
~~Colorado Department of Agriculture~~
~~305 Interlocken Parkway~~
~~Broomfield, CO 80021~~

~~and may be examined at any state publications depository library.~~

Subpart B Storage Requirements for Licensed Private Applicators

11.09. All licensed private applicators shall store pesticide concentrates and dilute mixtures using methods which are reasonably calculated to prevent the creation of an unreasonable risk of harm to persons, property, domestic or wild animals, or the environment.

11.10. Pesticide containers shall be stored so that they are not exposed to unreasonable risk of damage to the containers or their labels.

11.11. Pesticides and pesticide containers, stored in outdoor pesticide storage areas, shall be covered or otherwise protected from the elements, in a manner which is reasonably calculated to minimize the risk of damage to labels, and to avoid the creation of an unreasonable risk of harm to persons, property or domestic or wild animals.

Part 17. The Use of Pesticides in the Production of Cannabis

17.01. Definition and Construction of Terms for purpose of this Part 17, as used in these Rules unless the context otherwise requires:

(a) "Cannabis" means a plant of the genus Cannabis and any part of the plant.

(b) "Human consumption" means the consumption of cannabis by a person through oral ingestion, absorption through the skin, inhalation through smoking, vaporization or other means.

(c) "Tolerance" means a level of pesticide residue in or on food that the Environmental Protection Agency has determined with reasonable certainty will not pose a hazard to public health when used in accordance with label directions.

17.02. Pesticide Use on Cannabis: These Rules establish the criteria under which certain pesticides may be legally used on cannabis in the State of Colorado. To assist cannabis growers, the Department will publish a list of pesticides that it has determined meet these criteria. As of the effective date of these Rules, there are currently no pesticides that are specifically labeled or have pesticide residue tolerances established for use on cannabis by the federal government or the State of Colorado. The Colorado Department of Agriculture does not recommend the use of any pesticide not specifically tested, labeled and assigned a tolerance for use on cannabis because the health effects on consumers are unknown.

17.03. Any pesticide used in the cultivation of cannabis must be registered with the Colorado Department of Agriculture, except for purposes of research and demonstration conducted in accordance with 40 CFR Part 172 **(2017)** (AS INCORPORATED HEREIN BY REFERENCE).

17.04. Any pesticide registered with the Colorado Department of Agriculture may be used in accordance with its label or labeling directions for the cultivation of cannabis in the State of Colorado under the following conditions:

(a) For products registered by the Environmental Protection Agency under Section 3 of the Federal Insecticide, Fungicide, Rodenticide Act:

(1) All active ingredients of the pesticide product are exempt from the requirements of a tolerance, as established under 40 C.F.R. Part 180, Subparts D and E **(2017)** (AS INCORPORATED HEREIN BY REFERENCE);

(2) The pesticide product label allows use on the intended site of application. The term "site" for purposes of this Rule includes any location or crop to which the application is made;

(3) The pesticide product label expressly allows use on crops or plants intended for human consumption; and

(4) The active ingredients of the pesticide product are allowed for use on tobacco by the Environmental Protection Agency.

(b) Notwithstanding Part 17.04(a)(3) the Commissioner has the authority to permit the use of a pesticide product, that does not expressly allow use on crops intended for human consumption if:

(1) The active and inert ingredients are exempt under 40 C.F.R. Part 180, Subparts D and E **(2017)** (AS INCORPORATED HEREIN BY REFERENCE);

(2) The pesticide product label allows use on the intended site of application; and

(3) The active ingredients of the pesticide product are allowed for use on tobacco.

(c) The pesticide product label specifically allows use on cannabis.

(d) For 25(b) minimum risk pesticide products as defined in 40 CFR 152.25(f) **(2017)** (AS INCORPORATED HEREIN BY REFERENCE); the pesticide product label allows use on the intended site of application and allows use on crops or plants intended for human consumption.

(e) For pesticide products with a Colorado Special Local Need registration, issued under Section 24(c) of the Federal Insecticide, Fungicide and Rodenticide Act; the Colorado Special Local Need label allows use on cannabis.

17.05. The Commissioner may prohibit the use of any pesticide product for the cultivation of cannabis if the Commissioner determines that such use poses a significant threat to public health and safety or the environment.

Part 18. Statements of Basis, Specific Statutory Authority & Purpose

18.19. ADOPTED FEBRUARY 22, 2018 – EFFECTIVE APRIL 15, 2018

*Editing comments: Changes to this rule are indicated in **~~bold strikethrough~~** for removal and **BOLD, SMALL CAP, DOUBLE UNDERLINE** for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.*

THE AMENDMENTS TO THESE RULES ARE PROPOSED FOR ADOPTION BY THE COMMISSIONER OF THE COLORADO DEPARTMENT OF AGRICULTURE ("CDA") PURSUANT TO HIS AUTHORITY UNDER THE PESTICIDE APPLICATORS' ACT (THE "ACT"), §§ 35-10-118(2)(A) AND (B), C.R.S.

PURPOSE

THE PURPOSE OF THESE RULES IS TO INCORPORATE FEDERAL STATUTORY PROVISIONS BY REFERENCE PURSUANT TO § 24-4-103(12.5)(A), C.R.S. SPECIFICALLY, THESE RULES:

1. AMEND THE TITLE TO PART 1 OF THE RULE TO INCLUDE "INCORPORATIONS BY REFERENCE."

2. AMEND PART 1 BY ADDING A NEW RULE 1.03 TO ADDRESS THE INCORPORATION BY REFERENCE PROVISIONS.

3. AMEND RULES 2.28, 6.05, 11.08, 17.03, 17.04(A)(1), 17.04(B)(1), AND 17.04(D) BY UPDATING THE REFERENCES TO THE CODE OF FEDERAL REGULATIONS ("C.F.R.") TO INCLUDE THE DATE OF THE EFFECTIVE EDITION AND BY REMOVING REPETITIVE INCORPORATION STATEMENTS.

FACTUAL AND POLICY ISSUES

THE FACTUAL AND POLICY ISSUES ENCOUNTERED WHEN DEVELOPING THESE RULES INCLUDE:

1. ON SEPTEMBER 20, 2017, THE COMMISSIONER OF AGRICULTURE ADOPTED RULES TO ALLOW RESEARCH AND DEMONSTRATION USES OF UNREGISTERED PESTICIDES FOR THE CULTIVATION OF CANNABIS. IN THIS RULE THE DEPARTMENT REFERENCED THE C.F.R.

2. ON NOVEMBER 6, 2017, THE DEPARTMENT WAS NOTIFIED BY THE OFFICE OF LEGISLATIVE LEGAL SERVICES THAT THE DEPARTMENT'S C.F.R. REFERENCES INCORPORATED INTO RULE DID NOT COMPLY WITH THE REQUIREMENTS OF § 24-4-103(12.5)(A), C.R.S.

3. THE PROPOSED RULE CHANGES AMEND THE TITLE OF PART 1 TO ADD "INCORPORATIONS BY REFERENCE" AND ADD A NEW RULE 1.03 TO MEET REQUIRED PROVISIONS TO INCORPORATE BY REFERENCE SET FORTH IN § 24-4-103 (12.5)(A), C.R.S.

4. RULES 2.28, 6.05, 11.08, 17.03, 17.04(A)(1), 17.04(B)(1), AND 17.04(D) ARE AMENDED TO UPDATE THE C.F.R. EDITION DATE TO MEET REQUIRED PROVISIONS OF INCORPORATION BY REFERENCE AS SET FORTH IN § 24-4-103 (12.5)(A), C.R.S.

5. RULE 11.08 WAS AMENDED TO REMOVE THE EXISTING INCORPORATION LANGUAGE THAT IS NOW REDUNDANT TO RULE 1.03.

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