

(6) The adulteration or contamination of any pesticide sold in this state.

(7) The sale, offering for sale, or distribution of any pesticide without a label or of any pesticide which bears an illegible or inaccurate label.

(8) Violations of a stop order issued by the commissioner.

(9) Any violation of any provision of this Part or of any rule or regulation adopted under the provisions of this Part.

B. The commissioner may assess a civil penalty of not more than five thousand dollars for each violation of any of the prohibitions in Subsection A of this Section. Each day on which a violation occurs shall be considered a separate offense. In addition to civil penalties, the commissioner may assess the proportionate costs of the adjudicatory hearing against the offender. The commissioner by rule shall determine the amount of costs to be assessed.

C. The commissioner may suspend or revoke the registration of a pesticide for any violation of the provisions of Subsection A of this Section.

D. Penalties may be assessed, and registration suspended or revoked, only by a ruling of the commissioner based on an adjudicatory hearing held in accordance with the provisions of Section 3214 of this Chapter.

E. The commissioner may institute civil proceedings to enforce his rulings in the district court for the parish in which the violation occurred.

F. The commissioner may institute civil proceedings seeking injunctive relief to restrain and prevent the violation of the provisions of this Part, or of the rules and regulations adopted under the provisions of this Part, in the district court for the parish in which the violation occurred.

' **3227. Notice**

The commissioner shall notify each person who is affected by a suspension or revocation of a registration, or by civil penalties, by certified mail, return receipt requested.

' **3228. Exclusions**

Except as otherwise provided in specific agreements between the commissioner and the E.P.A., the provisions of this Part shall not apply to:

(1) Chemical components to be used in the manufacture of pesticides.

(2) Pesticides processed or manufactured in this state and intended for sale or distribution in other states or countries.

(3) Pesticides being transported through this state and destined for use in other states or countries.

PART IV. SALE AND APPLICATION OF PESTICIDES

' **3241. Certification of private applicators**

No person shall apply or supervise the application of any restricted use pesticide as a private applicator unless that person has the proper certification. Certification shall be issued only after the applicant has satisfactorily passed an examination or has satisfactorily demonstrated his knowledge of the laws, rules and regulations, and safety practices governing the sale and application of restricted use pesticides in accordance with the rules and regulations adopted by the commissioner. Certification shall be valid for three years and may be renewed in accordance with rules adopted by the commissioner. Private applicators may supervise the application of restricted use pesticides by competent uncertified individuals who are under the direct supervision of the private applicator.

' **3242. Certification of commercial applicators**

A. No person shall apply or supervise the application of any restricted use pesticide as a commercial applicator unless that person has the proper certification. Certification shall be issued only after the applicant has satisfactorily passed an examination. The commissioner shall establish categories and subcategories for certification in different areas of commercial application and shall establish specific standards for each category and subcategory. Certification shall be valid for three years and shall be renewed in accordance with rules adopted by the commissioner. The commissioner by rule shall provide for the issuance of annual certification cards. Commercial applicators may supervise the ground application of restricted use pesticides within the commercial applicator's certification by competent uncertified individuals who are under the direct supervision of the commercial applicator. Commercial applicators shall not supervise the aerial application of any pesticide by any uncertified person.

B. No person shall apply or supervise the application of any herbicide, rodenticide, insecticide, or restricted use pesticide, on a non-fee basis for grass and weed control, and rodent and general pest control in, on, or around structures or grounds of government subsidized and administered housing and multiplex housing, unless that person owns, leases, or rents the property or has proper certification as provided in Subsection A of this Section and the rules and regulations adopted thereunder.

' **3243. Licensing of owner-operators**

A. No person shall own or operate a business engaged in the application of pesticides for a fee unless that person has the proper license. Licenses shall be valid for one year and shall be renewed in accordance with rules adopted by the commissioner. There shall be three classes of licenses:

- (1) Ground applicators
- (2) Aerial applicators who do not apply phenoxy herbicides
- (3) Aerial applicators who apply phenoxy herbicides

B. All aerial applicators employed by the owner-operator shall be commercial applicators. All ground applicators employed by the owner-operator shall be commercial applicators or shall work under the direct supervision of a commercial applicator.

C. Prior to obtaining a license, each owner-operator shall post a surety bond with the commissioner. The amount of the bond for owner-operators engaged in ground applications shall be twenty-five thousand dollars. The amount of the bond for owner-operators engaged in aerial applications who apply phenoxy herbicides shall be fifty thousand dollars. The amount of the bond for owner-operators engaged in aerial applications who do not apply phenoxy shall be twenty-five thousand dollars. The bond shall be in favor of the commissioner and shall be conditioned on the licensee fulfilling his obligations to persons who suffer damages as a result of the application of pesticides by the owner-operator

or his employees. The bond shall be written by a bonding company approved by the commissioner. Bonds shall not be canceled except by ninety days written notice to the commissioner. Each person who suffers damages caused by any action of an owner-operator in connection with any application of a pesticide may sue on the bond in any court of competent jurisdiction to recover the damages. The aggregate liability of the surety shall not exceed the principal amount of the bond. Cash bonds, certificates of deposit, property bonds, or irrevocable letters of credit may be used to satisfy the bond requirement.

D. Each owner-operator may obtain liability insurance in lieu of the surety bond. The amount of the insurance shall be equal to the amount of the bond otherwise required. The commissioner by rule shall provide for the requirements for insurance.

E. All mechanically powered equipment used by an owner-operator shall be inspected annually by the commissioner and shall have the inspection decal prominently displayed.

F. Each aircraft and each rotor craft which is used to apply pesticides shall be identified with numerals, or letters, or both, which shall be in accordance with the Federal Aviation Administration's rules and regulations.

- (1) The aircraft or rotor craft is repainted; or
- (2) Until the numerals or letters are repainted, restored, or changed; or
- (3) Until January 1, 1989, whichever occurs first.

G. Owner-operators shall keep records for two years accurately reflecting the application of pesticides. The records shall be furnished to the commissioner upon his request. These records shall include:

- (1) The name of the pesticide applied.
- (2) The rate of each application.
- (3) The date of each application.
- (4) The place of application.
- (5) Such other information as the commissioner may require.

' **3244. Certification of pesticide salespersons**

No person shall sell or supervise the sale of restricted use pesticides as a pesticide salesperson unless that person has the proper certification. Certification shall be issued only after the applicant has satisfactorily passed an examination. Certification shall be valid for three years and shall be renewed in accordance with rules adopted by the commissioner. The commissioner by rule shall provide for the issuance of annual certification cards. Pesticide salespersons may supervise the sale of restricted use pesticides by competent uncertified individuals who are under the direct supervision of the pesticide salespersons.

' **3245. Licensing of pesticide dealers**

A. No person shall own or operate a business engaged in the sale of restricted use pesticides unless that person has the proper license. Licenses shall expire on December thirty-first of each year and may be renewed in accordance with rules adopted by the commissioner. Each pesticide dealer shall obtain a license for each location at which restricted use pesticides are sold.

B. Each person who is employed by a pesticide dealer and who sells restricted use pesticides shall be a pesticide salesperson or shall work under the direct supervision of a pesticide salesperson.

C. Pesticide dealers shall keep records for two years accurately reflecting their possession and disposition of restricted use pesticides. The records shall be furnished to the commissioner upon his request. These records shall include:

- (1) The name of the pesticide purchased and sold.
- (2) The amount of the pesticide purchased and sold.
- (3) The date of transactions.
- (4) The name, address, and certification number of the purchaser.
- (5) Such other information as the commissioner may require.

D. Each pesticide dealer shall maintain records of the storage of pesticides by that dealer. The commissioner shall adopt rules and regulations governing the records required by this Subsection. The rules and regulations shall require the pesticide dealers to maintain sufficient records to comply with the Hazardous Material Information Development, Preparedness, and Response Act, > [FN1] shall specify the length of time the records shall be maintained, and may require the dealer to report to the commissioner the information in the records which are required to be maintained.

' 3246. Certification and licensing of agricultural consultants

A. No person shall be employed as an agricultural consultant unless that person has the proper certification. Certification shall be issued only after the applicant has satisfactorily passed an examination. Certification shall be valid for three years and shall be renewed in accordance with rules adopted by the commissioner. The commissioner by rule shall provide for the issuance of annual certification cards.

B. Applicants for certification as agricultural consultants shall elect to be examined for certification in one or more of the following categories:

- (1) Control of insects, mites, nematodes, or other invertebrates.
- (2) Control of plant pathogens.
- (3) Control of weeds.
- (4) Soil management.
- (5) Such other categories as the commissioner by rule may establish.

C. The commissioner by rule may establish such other categories as he deems necessary.

D. No new applications for an agricultural consultant's certificate shall be accepted unless the applicant furnishes satisfactory evidence that he meets the following requirements:

- (1) He holds a bachelor's, master's, or a doctor's degree from an accredited college or university.
- (2) He has earned at least thirty semester hours of college credit in agronomy, soil science, weed science, entomology, plant pathology, horticulture, plant physiology, or other biological science, or any

combination of such.

(3) He has earned at least four hours of college credit in each discipline area for which certification is sought. The four discipline areas requiring certification are entomology, plant pathology, weed science, and soil science.

(4) He has, with a master's or doctor's degree, at least one crop season of experience, and with a bachelor's degree, at least two crop seasons of experience, in the field for which he requests certification, employed by a certified agricultural consultant.

E. All experience shall be documented in such manner as the commissioner may require. The commissioner may waive the requirement of experience while employed by an agricultural consultant for applicants with a master's or doctor's degree who demonstrate other comparable experience.

F. Every field scout employed by a licensed agricultural consultant shall be registered with the Department of Agriculture. This registration shall be valid only as long as the individual is employed by the agricultural consultant indicated on the face of the registration certificate.

G. Agricultural consultants shall put all recommendations in writing with two copies each. One copy shall be signed, dated, and furnished to the person for whom the recommendation is being made. The consultant shall retain one copy which shall be furnished to the commissioner upon his request. When a pesticide use is recommended, the recommendation shall include:

- (1) The pesticide or pesticides recommended.
- (2) The recommended rate of application.
- (3) The date on which each application is recommended.
- (4) The area to be treated.
- (5) A brief statement of the reason or reasons for the recommendations.
- (6) Such other information as the commissioner may require.

H. No person shall engage in business as an agricultural consultant for a fee unless that person holds a license as an agricultural consultant. The commissioner by rule shall provide the requirements for an agricultural consultant's license. Each agricultural consultant's license shall expire on December thirty-first of each year and may be renewed in accordance with rules adopted by the commissioner.

I. The provisions of this Section shall not apply to employees of the state or federal government conducting research or demonstrations in their official capacities.

' **3247. Use of certificates**

The commissioner by rule may provide that persons who hold more restrictive certificates may use those certificates in lieu of less restrictive certificates.

' **3248. Direct supervision**

Persons who hold certificates issued under the provisions of this Chapter may provide direct supervision for the

application or sale of a restricted use pesticide by competent uncertified persons. The certified person shall be fully responsible for the actions of the uncertified persons under his direct supervision. The certified person shall give instruction and direction to the uncertified persons and shall be available when and if his presence is needed. The certified person need not be physically present at all times unless the commissioner by rule requires the physical presence of the certified person at the time the restricted use pesticide is sold or applied.

' **3249. Examinations**

A. Each applicant for a certificate issued under the provisions of this Chapter shall satisfactorily pass an examination prior to being issued a certificate. The commissioner by rule shall provide for the preparation, administration, and grading of all examinations. The commissioner shall review and approve all proposed examinations and shall determine the minimum score necessary to satisfactorily pass each examination.

B. The commissioner may designate individuals or associations who may submit proposed questions for examinations.

C. The commissioner shall fix the dates for all examinations and may establish a date prior to each examination which shall be the last date on which applications to take examinations will be accepted. The commissioner may refuse to administer examinations to persons whose applications are received after the cutoff date.

D. The commissioner by rule may require holders of certificates to attend a course of instruction or satisfactorily pass an examination in order to renew the certification.

' **3250. Applications**

A. Each application for examination shall be in writing and shall be on forms prescribed by the commissioner. Each application shall be accompanied by the examination fee and such information and documents as the commissioner may require.

B. Each application for a license, certificate, or registration shall be in writing and shall be on forms prescribed by the commissioner. Each application shall be accompanied by the license, certificate, or registration fee, proof of passing the examination, proof of financial responsibility where required, and such other information and documents as the commissioner may require.

C. Each applicant shall indicate on each application the street address of his place of business. If the place of business does not have a street address, the applicant shall provide sufficient information to establish the physical location of the place of business.

' **3251. Fees**

A. The examination fee for each examination shall be established by the commissioner by rule in an amount not to exceed one hundred dollars. In establishing the amount of the examination fee, the commissioner shall consider the cost incurred in obtaining, administering, and grading the examination.

B. The fees for the licenses and certificates issued or reissued by the commissioner shall be as follows:

(1) The resident license fee shall be one hundred dollars. For the purposes of this Paragraph, a "resident" means any person who has been domiciled in Louisiana for a period of at least ninety days immediately preceding the date of application for the license and who has not claimed residence in any

other state for any other purpose.

(2) The nonresident license fee shall be two hundred dollars. For the purposes of this Paragraph, a "nonresident" means any person who does not qualify as a resident under Paragraph (1) above.

(3) The certification fee, except as provided in Subsection C of this Section, shall be fifteen dollars.

(4) The fee for issuing the annual certification card shall be fifteen dollars. This provision shall not apply to private applicators.

(5) The fee for inspecting each item of mechanically powered equipment shall be twenty-five dollars.

(6) The fee for registering each field scout shall be five dollars.

C. The certification fee for private applicators shall be ten dollars. The certification fee for employees of local, state, and federal governments for the application of pesticides in the course of their public employment shall be ten dollars.

D. The commissioner by rule shall establish procedures for the payment of fees.

' **3252. Violations, enforcement**

A. Violations of this Part shall include but shall not be limited to the following:

(1) Making false or fraudulent claims not in accordance with the label through any media misrepresenting the efficacy of pesticides or methods to be utilized.

(2) Making a pesticide recommendation or application inconsistent with the labeling or in violation of the E.P.A. or state restrictions on the use of that pesticide.

(3) Knowingly operating faulty or unsafe equipment.

(4) Operating in a faulty, careless, or negligent manner.

(5) Neglecting or, after notice, refusing to comply with the provisions of this Chapter or rules and regulations adopted under the provisions of this Chapter.

(6) Refusing or neglecting to keep and maintain the records required by this Part.

(7) Knowingly making false or fraudulent records or invoices.

(8) Selling or supervising the sale of any restricted use pesticide to a person who does not have the proper certification.

(9) The application of a restricted use pesticide by a ground applicator who does not hold the appropriate certification or who is not under the direct supervision of a person who holds the appropriate certification, or the application of any pesticide by an aerial applicator who does not hold the appropriate certification.

(10) Supervising the sale or application of a restricted use pesticide without the proper certification.

(11) Allowing the application of restricted use pesticides by uncertified persons without the physical presence of a certified applicator, when the physical presence of the certified applicator is required by the commissioner.

(12) The aiding or abetting, or conspiring to aid or abet, by any licensed or certified person, of the violation of the provisions of this Chapter, or of the rules and regulations adopted under the provisions of this Chapter, by any unlicensed or uncertified person.

(13) Allowing a license or certificate to be used by another person.

(14) Impersonating any federal, state, parish, or city inspector or official who has authority to enforce pesticide laws, ordinances, rules, or regulations.

(15) Interference with the commission, the commissioner, the state chemist, or their representatives in the performance of their duties in connection with this Part.

(16) Performance of a service or function by any person whose license or certificate has been suspended or revoked, or by any person who has been denied a license or certificate, or failure by any person to obtain the necessary license or certificate for any activity requiring a license or certificate under the provisions of this Chapter.

(17) Application of phenoxy herbicides by any aerial applicator who does not have the proper license or the proper bond or insurance.

(18) Any violation of any provision of this Chapter or of any rule or regulation adopted under the provisions of this Chapter.

(19) The sale of a restricted use pesticide by a person who does not hold the appropriate certification or who is not under the direct supervision of a person who holds the appropriate certification.

(20) The purchase of a restricted use pesticide by a person who does not hold the appropriate certification.

(21) Any evasion of payment of any fines legally imposed by the commissioner.

B. The commissioner may assess a civil penalty of not more than five thousand dollars for each violation of any of the prohibitions in Subsection A of this Section. Each day on which a violation occurs shall be considered a separate offense. In addition to civil penalties, the commissioner may assess the proportionate costs of the adjudicatory hearing against the offender. The commissioner by rule shall determine the amount of costs to be assessed.

C. The commissioner may suspend or revoke any license or certificate issued under the authority of this Part, or impose probation on any person who holds a license or certificate, for any violation of any of the prohibitions in Subsection A of this Section.

D. Civil penalties may be assessed, licenses and certificates may be suspended or revoked, and probation may be imposed, only by a ruling of the commissioner based on an adjudicatory hearing held in accordance with the provisions of Section 3214 of this Chapter.

E. The commissioner may institute civil proceedings to enforce his rulings in the district court for the parish in which the violation occurred.

F. The commissioner may institute civil proceedings seeking injunctive relief to restrain and prevent the violation of the provisions of this Part or of the rules and regulations adopted under the provisions of this Part in the district court for the parish in which the violation occurred.

' **3253. Notice**

A. The commissioner shall notify each person who is affected by a suspension or revocation of a license or certificate, or by probation, or by civil penalties, by certified mail, return receipt requested.

B. Each person whose license or certificate has been revoked or suspended shall return the license or certificate to the commissioner within fifteen days of the date on which the notice was received.

' **3254. Special exemptions for certain applications and recommendations of pesticides**

As used in > R.S. 3:3252(A)(2), the reference to recommendations or applications inconsistent with the labeling of a pesticide shall not include the following:

(1) The application of a pesticide at any dosage, concentration, or frequency less than that specified on the labeling.

(2) The application of a pesticide against any target pest not specified on the labeling, if the application is to the crop, animal, or site specified on the labeling, unless the E.P.A. has required that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling.

(3) The use of any method of application not prohibited by the labeling.

(4) The mixing of a pesticide or pesticides with a fertilizer when the mixture is not prohibited by the labeling.

' **3255. Complaints**

A. Any person who believes that he has suffered damages as a result of any action by any person regulated by the provisions of this Part may file a damage complaint with the commissioner.

B. All damage complaints shall be in writing, shall be on forms prescribed by the commissioner, shall be signed by the complainant, and shall be filed within fifteen days of the action by the alleged offender or the discovery of the damage, whichever occurs later. Failure to file a timely complaint shall not affect the right of the person to institute legal proceedings for the damages.

C. Each person who files a damage complaint shall permit the commissioner, the alleged offender, or the representative of either, such as bondsmen or insurers, to observe within reasonable hours the lands, crops, or nontarget organisms alleged to have been damaged in order to determine any damages. Failure of the claimant to permit such observation and examination of the damaged property shall automatically bar the claim against the alleged offender under this Section.

D. The commissioner may undertake such monitoring activities, including but not limited to monitoring of the air, soil, water, plants, and animals as may be necessary for the administration and enforcement of this Section.

' **3256. Exemptions**

A. The commissioner by rule shall delegate to the Structural Pest Control Commission the authority to examine

and certify all structural pest control operators required to be certified under the provisions of > R.S. 3:3301 et seq.

B. No governmental entity or employee thereof shall be exempt from the certificate, enforcement, or record-keeping provisions of this Part, except as otherwise provided herein.

' **3257. Reciprocal agreements**

The commissioner may waive all or part of the examination requirements for applicants for certification on a reciprocal basis with any other state which has substantially the same requirements for examinations.

PART V. PESTICIDE WASTES

' **3271. Administration**

A. The provisions of this Part shall be administered by the Department of Agriculture and Forestry through the division of pesticide and environmental programs within the office of agricultural and environmental sciences.

B. The commissioner shall adopt such rules and regulations as are necessary to implement the provisions of this Part. The rules and regulations shall be adopted in accordance with the Administrative Procedure Act. > [FN1]

C. The commissioner may employ such personnel as are necessary to administer the provisions of this Part.

' **3272. Cooperative agreements**

In order to accomplish the objectives of this Part, the commissioner may enter into cooperative agreements with appropriate governmental agencies.

' **3273. Monitoring**

The commissioner shall establish a program for monitoring pesticide wastes in the state.

' **3274. Determinations**

A. When the commissioner determines that the concentrations of pesticide wastes exceed promulgated federal or state standards, or when the commissioner determines that the concentrations of pesticides pose a threat or reasonable expectation of a threat to human health or to the environment, the commissioner shall determine the appropriate action to be taken under the provisions of this Part.

B. The commissioner shall adopt rules to establish procedures for making determinations under the provisions of Subsection A of this Section.

C. The determinations made under Subsection A of this Section shall be based on scientific and technical