

Proposed Rulemaking

Title

Promulgated by:
State Plant Board

Title 2. Agriculture

Chapter II. State Plant Board, Department of Agriculture

Subchapter C. Pesticides

Part 70. Arkansas Rules on Pesticide Use

Subpart 1. Generally

2 CAR § 70-101. Title.

(a) The following rules of the State Plant Board, written pursuant to the Arkansas Pesticide Use and Application Act, Arkansas Code § 20-20-201 et seq., and the Arkansas Pesticide Control Act, Arkansas Code § 2-16-401 et seq., shall be known as "The Arkansas Rules On Pesticide Use".

(b) Promulgation of this part repeals all provisions of the State Plant Board's current rules entitled "Arkansas Rules On 2,4-D, 2,4-DB, MCPA, And Other State Restricted Use Herbicides" effective December 31, 2002.

2 CAR § 70-102. Purpose.

(a) Pesticides are valuable to the state's agricultural production and to the protection of people and the environment from insects, rodents, weeds, and other forms of life which may be pests, but it is essential to the public health and welfare that they be regulated to prevent adverse effects on human life and the environment.

(b) However, at times certain pesticides present problems that were unanticipated by the:

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- (1) Manufacturer;
- (2) Grower; or
- (3) Applicator.

(c) The purpose of this part is to provide additional mechanisms, other than denying registration of a product in Arkansas, to minimize the adverse effects of certain pesticides to:

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

2 CAR § 70-103. Definitions.

As used in this part:

(1) "Buffer zone" means the distance an applicator must maintain between the field or area of application and a protected subject inside of which the subject pesticide may not be applied;

(2) "Custom applicator" means a commercial applicator that applies pesticides assigned the Class E or Class F designation;

(3) "Desirable vegetation" means any type of vegetation:

- (A) ~~The~~ For which the pesticide label specifically identifies for protection;
- (B) For which the product is not labeled; or
- (C) For which the owner/manager desires protection from the deposition of pesticides; and

(4) "Drift" means off-target movement of a pesticide onto desirable vegetation, waterways, or where human health or the environment may be adversely impacted, that occurs as a result of pesticide application.

2 CAR § 70-104. General.

(a)(1) The effective date of this part shall be January 1, 2003, and shall apply to all

products registered for 2003.

(2) From that time forward, all pesticides registered for sale in the State of Arkansas shall be classified as:

- (A) Class A;
- (B) Class B;
- (C) Class C;
- (D) Class D;
- (E) Class E;
- (F) Class F;
- (G) Class G;
- (H) Class H; ~~or~~
- (I) Class I; or
- (J) Class J.

(3) Such designation shall remain the same unless changed by the State Plant Board by promulgation of a rule so changing the designation.

(4)(A) ~~Whatever designation is assigned to a product by the board, product~~ Product dealers, users, and applicators must comply with the restrictions for ~~the a~~ product's assigned class as designated by the Board.

(B) Such restrictions will apply to product uses allowed as a result of Section (18) or Section 24(c) actions under FIFRA, except where the requirements on the label are clearly more restrictive than the board's requirements, in which case the more restrictive requirement must be followed.

(b)(1) The designations in this part apply to all pesticide products registered in the State of Arkansas.

(2) The use restrictions itemized in this part are intended to be in addition to the product label.

(3) ~~However, where~~ Where the label is more restrictive than the applicable restrictions listed in this part, then the label shall be followed.

(4) Each successive class designation in this part includes the restrictions defined in the designations that precede it.

2 CAR § 70-105. Product classification.

The following represents the product classifications assigned to pesticides currently registered under Arkansas law:

(1)(A) Class A.

(B) All registered pesticides not otherwise assigned below;

(2) Class B;

(3) Class C;

(4) Class D;

(5) Class E;

(6)(A) Class F.

(B) All 2,4-D and 2,4-D-containing pesticides, MCPA;

(7)(A) Class G.

(B) Glyphosate-containing products packaged in containers one gallon (1 gal.) or larger, labeled for agricultural use, and used in row crop and rice production and commercial right-of-way treatment;

(8)(A) Class H.

(B) All pesticides containing dicamba; ~~and.~~

(9)(A) Class I.

(B) Quinclorac, see Attachment 1; ~~and.~~

~~(10)(A) Class J.~~

~~(B) All pesticides containing warfarin when used as a feral hog (Sus scrofa) toxicant.~~

2 CAR § 70-106. Class A.

(a)(1) All pesticides when registered in the State of Arkansas shall be classified as Class A unless research or experience has shown that certain potential problems may be inherent with the use of the product.

(2) Such knowledge may be as a result of but not limited to:

(A) Research findings;

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- (B) Findings of other state and federal agencies; or
- (C) Experience of the State Plant Board.

(3) In such cases the board may, by rule, place the product in another class.

(b)(1) Products with this classification must be used in accordance with the label restrictions and other restrictions, if any, imposed by board rules other than this part.

(2) Documentation of equipment set-up must be maintained by the commercial applicator on forms provided by the ~~board~~department and made available to the ~~board~~department upon request.

(3)(A) Insecticides that are intended to be applied in low volume (LV) or ultra low volume (ULV), and product label guidelines require droplet sizes designated as “fine” or smaller in accordance with the August 1999 issue of the ASAE S572 report entitled Spray Nozzle Classification by Droplet Spectra, shall not be required to comply with the board’s rules regarding spray droplet size.

(B) Said products must comply with the product label.

2 CAR § 70-107. Class B.

(a) Products with this designation shall be used in accordance with:

(1) All other applicable federal or state laws and the rules written pursuant thereto;

(2) The label registered with the State of Arkansas, ~~rules promulgated by the State Plant Board~~;

(3) The applicable restrictions identified for Class A; and

(4) The following additional restrictions.

(b) If enforcement action is taken against a commercial, noncommercial, or private applicator regarding drift of a product with this designation or a buffer zone violation, a part of the enforcement action will require the applicator to:

(1) Attend a drift control training class administered by the ~~board~~department;

or

(2) Other training that is acceptable to the board.

2 CAR § 70-108. Class C.

(a) Products with this designation shall be used in accordance with:

(1) All other applicable federal or state laws and the rules written pursuant thereto;

(2) The label registered with the State of Arkansas;

(3) The applicable restrictions identified for Class A and Class B; and

(4) The following additional restrictions.

(b)(1) All commercial equipment used to apply pesticides with this designation must be in compliance with the application equipment set-up requirements specified for herbicide applications contained in the rules written pursuant to the Pesticide Use and Application Act, as amended, Arkansas Code § 20-20-201 et seq., prior to the initial application.

(2) The ~~State Plant Board~~department is to verify compliance with the set up that was originally authorized.

(3) If the application equipment is modified, it must again be authorized to be in compliance with the requirements for herbicide application contained in the before-referenced rules.

(4) The ~~board~~department will inspect all application equipment each year that is used to apply products with the Class C designation.

(5) A fee of twenty-five dollars (\$25.00) shall be charged for each ~~board~~department inspection.

(c) Applications of products with this designation with equipment that is not acceptable to or has not been inspected by the ~~board~~department will be a violation of this part.

2 CAR § 70-109. Class D.

(a) Products with this designation shall be used in accordance with:

(1) All other applicable federal or state laws and the rules written pursuant thereto;

(2) The label registered with the State of Arkansas;

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- (3) The applicable restrictions identified for Class A, Class B, and Class C; and
- (4) The following additional restrictions.

(b)(1) Applications may be made only when the wind is not blowing in the direction of:

- (A) Desirable vegetation;
- (B) Waterways; or
- (C) Where human health or the environment may be adversely impacted.

(2) Where desirable vegetation, waterways, or human health and the environment cannot be protected by ensuring they are not downwind from the application site, then, unless a greater distance is required by the label or other applicable state or federal rules, a three hundred-foot minimum buffer zone must be maintained between the protected entity (desirable vegetation, waterway, etc.) and the sprayed area.

2 CAR § 70-110. Class E.

(a) Products with this designation shall be used in accordance with:

- (1) All other applicable federal or state laws and the rules written pursuant thereto;
- (2) The label registered with the State of Arkansas;
- (3) The applicable restrictions identified for Class A, Class B, Class C, and Class D; and
- (4) The following additional restrictions.

(b) Dealers requirements.

(1)(A) Before selling, offering for sale, or distributing pesticides with this designation in packages of more than one quart (1 qt.), a dealer must be a licensed restricted use pesticides dealer.

(B) A dealer may sell, offer for sale, or distribute only those pesticides that are registered in the state.

(2)(A) Each branch of a license holding dealer which also sells or distributes these products must have a dealer's license.

(B) Firms or distributors who take orders for these products must secure a dealer's license, even though the order is placed with a dealer or manufacturer who holds a license, and even though no profit is made.

(3)(A) Dealers must keep a record of each sale or distribution of products with this designation to custom or private applicators or dealers in containers of more than one quart (1 qt.) on forms available from, or approved by, the ~~State Plant Board~~ department.

(B) Entries in the record shall be made at the time of sale or distribution and shall include the:

(i) Date of the purchase;

(ii) Name, address, and license or permit number of the purchaser;

and

(iii) Name and address of the delivery location.

(C) The complete brand name and quantity of the product shall also be recorded. These records shall be:

(i) Kept by the dealer for two (2) years from the date of sale; and

(ii) Made available for inspection by the ~~board~~ department upon requestor its representative upon request.

(4)(A) The sale or distribution of products with this classification in containers of more than one quart (1 qt.) to any firm or person other than a dealer or a custom or private applicator holding a current and valid license or permit is prohibited.

(B) Dealer must have a copy of the custom applicator's license on file.

(5) Nonresidents of Arkansas shall designate and maintain a resident agent in this state for service of process.

(c) Requirements for custom application.

(1) The application of products with the Class E or Class F designation shall be known as custom application.

(2)(A) To be eligible to apply products with the Class E or Class F designation, a commercial application firm must obtain a firm's custom applicator permit from the ~~board~~ department prior to making any applications.

(B) Said permit must designate an operator-in-charge whose responsibility is to supervise all custom applications made by the firm.

(3) Issuance of the permit shall be conditioned on the following:

(A)(i) Commercial aerial application firms must have a firm's commercial applicator license issued by the boarddepartment to apply pesticides in Arkansas.

(ii)(a) All pilots that apply pesticides for the firm must have an individual commercial applicator pilot license (with category) issued by the boarddepartment.

(b) The firm must have a copy of all individual commercial applicator pilot licenses held by pilots employed by the firm.

(iii)(a) Commercial aerial application firms that wish to apply products with the Class E or Class F designation must obtain a firm's custom applicator permit from the boarddepartment.

(b) The firm's permit must designate at least one (1) of its licensed individual commercial applicators that has passed the custom applicator test as an operator-in-charge.

(c)(1) All pilots making custom applications must have an individual commercial applicator pilot license with authorization to apply Class E or Class F products.

(2) Said authorization is obtained by passing a custom applicator written test administered by the boarddepartment;

(B)(i) Commercial ground application firms must have a firm's commercial applicator license issued by the boarddepartment.

(ii) At least one (1) person working for the firm must have an individual commercial applicator license (with category) issued by the boarddepartment.

(iii)(a) Commercial ground application firms that wish to apply products with the Class E or Class F designation must obtain a firm's custom application permit.

(b) The firm's permit must designate at least one (1) of its licensed individual commercial applicators that has passed the custom applicator test as

an operator-in-charge;

(C) The application vehicle must be covered by a current certificate of inspection as required in 2 CAR § 70-107;

(D)(i) Licensed commercial application firms that do tree injection work only, do not need a firm's custom applicator permit to apply products with the Class E or Class F designation.

(ii) For such firms, a tree injector's permit is required.

(iii) ~~However, the~~The firm's tree injector permit must designate at least one (1) of the firm's licensed individual commercial applicators that has passed the tree injector test administered by the ~~board~~department as an operator-in-charge;

(E)(i) A deposit of two hundred and fifty dollars (\$250) shall be made with the ~~board~~department by the custom application firm, except that those persons doing tree injector work exclusively will deposit ten dollars (\$10.00) per tree injector, up to a maximum of two hundred and fifty dollars (\$250).

(ii)(a) Said deposit shall be returned at the expiration of the permit upon request unless the custom applicator is found in violation of the board's rules or suffers cancellation of his or her custom applicator's permit.

(b) ~~In which case the~~The deposit will be retained by the ~~board~~department to supplement cost recovery of inspection and administration incidental to such finding;

(F)(i)(a) A deposit of funds as described in subdivision (c)(3)(E) of this section and proof of financial responsibility, as described below is required.

(b) Nonresidents of Arkansas shall designate and maintain a resident agent in this state for service of process.

(c) Custom application permits, custom application authorizations, and tree injector permits shall expire December 31 of each year.

(ii) Financial responsibility in the minimum of one hundred thousand dollars (\$100,000) shall be maintained by the custom application firm or tree injection firm during the term of his or her permit, with proof of such financial responsibility submitted to the ~~board~~department.

(iii) Proof of financial responsibility shall consist of one (1) of the following:

(a)(1) The deposit of a certificate of insurance or insurance policy not to exceed five thousand dollars (\$5,000) deductible from an insurer or surplus line broker authorized to do business in Arkansas insuring the custom application firm and any of its agents against liability for injury resulting from the application of products with this designation.

(2) If a claim is made on this type of policy, then the policy must not expire for at least six (6) months after the expiration of the permit;

(b) A letter of credit from a bank located in Arkansas guaranteeing financial responsibility;

(c) A surety bond; or

(d) An escrow account with a bank located in Arkansas;

(G)(i) Application for a permit must be made on forms furnished by the ~~board-department~~ accompanied by the following fees:

(a)(1) Aerial custom application firms must pay an annual application processing fee of one hundred fifty dollars (\$150) plus fifty dollars (\$50.00) for each operator-in-charge.

(2) Pilots making custom applications must pay an annual application processing fee of thirty-five dollars (\$35.00) for authorization to apply products in Class E and Class F;

(b) Ground custom application firms must pay an annual application processing fee of one hundred fifty dollars (\$150) plus fifty dollars (\$50.00) for each operator-in-charge; and

(c) Applicants for a tree injector's permit must pay an annual application processing fee of fifty dollars (\$50.00) plus fifty dollars (\$50.00) for each operator-in-charge.

(ii)(a) ~~Should, at any time, a~~ custom application firm ~~be left~~ without an operator-in-charge or a pilot with an individual commercial applicator pilot license with authorization to apply products with the Class E or Class F designation, either

because of invalidation of the permit or for any other reason, ~~such~~ shall automatically ~~invalidate the~~ have its custom applicator's firm permit invalidated.

(b) It shall be a violation of this part for an individual or firm to act as a custom applicator that is not licensed to do so by the ~~board~~department;

(H)(i) The ~~board or its authorized representative or representatives~~department may refuse issuance, after a hearing, of a custom applicator's permit to any applicant when such applicant has been found in violation of this part four (4) times in a three-year period.

(ii) Such applicant may appeal to the board.

(iii) All requests for an appeal must be made in accordance with the board's policy on appealing a decision;

(I)(i) All equipment used for custom application of the products with this designation must have a decal provided by the ~~board~~department affixed to the device in a location where it can be easily seen by a ~~board representative~~department employee and protected from removal or disfigurement by work activity.

(ii) This decal may only be affixed to equipment that meets the requirements set out in this part and other applicable rules promulgated by the board.

(iii) Use of equipment for custom application that does not have a current decal will be a violation of this part.

(iv) Decals are not transferable between equipment.

(v) Each decal shall be issued at a cost of fifty dollars (\$50.00).

(vi)(a) Subsequent to issuance of a decal, the equipment on which the decal is to be attached will be subject to inspection by the ~~board~~department.

(b) Equipment found not meeting the requirements set out by this part or other applicable rules promulgated by the board will be issued a stop use order that will be released by the ~~board~~department once the ~~board~~department is satisfied that the equipment meets the set up requirements of the applicable rules.

(c) The applicator will also be considered in violation of the board's rules on pesticide application and be subject to the required enforcement action.

(vii) All decals and permits expire on December 31 of each year.

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

(a) The vehicle must be thoroughly decontaminated;

(b)(1) The tank must be thoroughly rinsed and the rinsate disposed of in accordance with the label.

(2) If the label does not address rinsate disposal, the rinsate should be collected and disposed of in accordance with applicable state and federal disposal laws; and

(c)(1) The entire spray or application system must be replaced or decontaminated using the best available technology such that a sample taken from the successive pesticide tank load would contain no detectable concentration of the previous product.

(2) Where research has established a concentration below which no adverse effects occur and that concentration level is not a violation of state or federal law or rules written pursuant to such laws, then that established concentration will be acceptable.

(3) Compliance with this provision in no way exempts the product user from compliance with any other responsibility imposed by state or federal law or regulation written pursuant thereto.

(4)(A) Pesticide application equipment must have a leak-free valve that is painted hunter orange from which a sample can be taken.

(B) Aircraft must have a sample valve located at the low point in the spray system.

(C) Ground application equipment must have a sample valve located in the pressure by-pass line;

(J)(i)(a) All firms desiring to do custom application work must have a custom application permit to do so. Said permit must designate an operator-in-charge.

(b) Eligibility as operator-in-charge will be conditioned on the

following:

(1) Achieving a score of seventy percent (70%) or better on an examination administered by the ~~board~~department;

(2) Pilots must hold a valid Federal Aviation Administration pilot's commercial certificate;

(3) Applicant may not have more than four (4) enforcement actions indicated on the ~~board's department's~~ records in the ~~three (3) two (2)~~ years prior to the date of testing; and

(4) The fee for each test shall be thirty-five dollars (\$35.00).

(ii) Pilots and operators-in-charge shall be responsible for notifying the ~~board~~department of the name and location of employment prior to starting work; and

(K)(i) The custom application firm must maintain records of each application of products with this and the Class F designation.

(ii) Said records must be retained at the principal Arkansas office of the custom application firm as indicated on the firm license for a period of ~~three (3) two (2)~~ years and be available for inspection by ~~a board representative~~the department.

(iii) The records shall include at a minimum the following information:

(a) Name and address of the person or persons in control of the crops, plant, etc;

(b)(1) Location of the crop, plants, etc. treated.

(2) Location description must include:

(A) County;

(B) Nearest town;

(C) Physical address if available; and

(D) GPS or map coordinates of the primary entrance to the field;

(c) Date, start time, and ending time of the application;

(d)(1) Wind speed and direction at the start and ending times of the application and the type of instrument used to measure wind speed and direction.

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(2) The location of instrument at time of reading (preferably “field of application”) must also be recorded;

(e) Complete brand name and United States Environmental Protection Agency registration number of the material used;

(f) Number of acres and type of crop to which the material was applied;

(g) Type of equipment used and the firm’s custom application equipment number assigned to it by the ~~board~~department;

(h) Distance from and direction to any susceptible crops within a one-mile radius of the treated crop; and

(i) Name of the application vehicle operator.

(d) Requirements for noncustom application of products in this class.

(1) Whether designated as “restricted” by the United States Environmental Protection Agency or not, products in containers of more than one quart (1 qt.) with this class designation and the Class F designation may not be purchased by or sold to persons who do not have a current commercial, noncommercial, or private applicator’s license.

(2) All applications of products with this designation by private applicators must be in accordance with the applicable application conditions required of the custom applicator.

(3)(A) The private applicator must maintain records of each application of products with this and the Class F designation.

(B) Said records must be:

(i) Retained for a period of ~~three (3)~~two (2) years; and

(ii) Available for inspection by ~~a board representative~~the department.

(C) The records shall include at a minimum the following information:

(i) Name and address of the person or persons in control of the crops, plant, etc;

(ii)(a) Location of the crop, plants, etc. treated.

(b) Location description must include:

- (1) County;
- (2) Nearest town;
- (3) Physical address, if available; and
- (4) GPS reading or map coordinates of the primary entrance

to the field;

(iii) Date, start time, and ending time of the application;

(iv)(a) Wind speed and direction at the start time and ending time of the application and type of instrument used to measure wind speed and direction.

(b) The location of instrument at time of reading (preferably "field of application") must also be recorded;

(v) Complete brand name and United States Environmental Protection Agency registration number of the material used;

(vi) Number of acres and type of crop to which the material was applied;

(vii)(a) Type of equipment used.

(b) If the product was applied by a custom applicator, record the firm's custom application equipment number assigned to the equipment used by the boarddepartment;

(viii) Distance from and direction to any susceptible crops within a one-mile radius of the treated crop; and

(ix) Name of the application vehicle operator.

(e) Exemptions.

(1)(A) The licensing requirements of this part do not apply to:

(i) The United States Department of Agriculture, the Arkansas experiment stations, and other state or federal agencies;

(ii) Ornamental and turf weed control;

(iii) Company demonstrations with ground equipment; or

(iv) Sales of fertilizer, soil conditioners, or similar products containing registered products with this designation and packaged for home use.

(B) Provided that nothing in this section shall be construed as exempting

custom applicators from the provisions of this part when making applications for the agencies listed herein or exempting any such agency acting as a dealer from the dealer requirements.

(2) Products with the Class E or Class F designation that are not designated as restricted use products by the United States Environmental Protection Agency may be purchased from an Arkansas pesticide dealer for use outside the State of Arkansas without the dealer having to have a dealer's license or the purchaser having an applicator's license.

(3) Commercial applicators and private applicators that can provide proof of current certification and licensing from another state may purchase restricted use pesticides from a restricted use pesticide dealer licensed in Arkansas if the product is to be used outside of Arkansas.

2 CAR § 70-111. Class F.

(a) Products with this designation shall be used in accordance with:

(1) All other applicable federal or state laws and the rules written pursuant thereto;

(2) The label registered with the State of Arkansas;

(3) The applicable requirements identified for Class A, Class B, Class C, Class D, and Class E; and

(4) The following additional restrictions.

(b) Dealers may not store or transport products with this designation in the same room or vehicle with seeds, other pesticides that do not have this designation, or fertilizers, except in leak-proof containers not to be opened while in storage, and must observe all other precautions necessary to prevent contamination of these products.

(c) The use of esters of the products with this designation, except low-volatile esters, is prohibited.

(d) No product with this designation may be applied within one-fourth (1/4) mile of susceptible crops at any time except as otherwise indicated by this part.

(e) From April 16 through September 15 of each year, the following conditions shall

apply:

(1) Pesticides labeled for agricultural use that contain the active ingredient or ingredients assigned to this class, may not be applied by ground or air in Clay, Greene, Craighead, Poinsett, Cross, Crittenden, St. Francis, Lee, Phillips, and Mississippi counties;

(2)(A) Where no viable alternative is believed to exist, an annual permit may be obtained from the ~~State Plant Board~~department to allow an exemption to these restrictions.

(B) ~~Said-The~~ permit must be obtained prior to application and will require a permit application fee in the amount of one hundred dollars (\$100).

(C) The application for the permit must be on forms authorized by the ~~board~~department.

(D) This exemption is conditioned on the producer complying with the following requirements:

(i) The permittee must have the permit in his or her possession prior to making the application and it must be made available to the ~~board or its~~ designeedepartment upon request;

(ii) For each application the following information must be recorded:

(a) A physical description of the location of the field;

(b) Date of the application;

(c) Start time and stop time for each load applied to the field;

(d)(1) Wind speed (may not be less than two miles per hour (2 m.p.h.), wind direction, ambient temperature, and precipitation condition at ten-minute intervals during the application of each load.

(2) ~~Said-The~~ measurements must be made at the field of application; and

(e) The producer must be present during the application and sign the document containing the information;

(iii) The above information must be filed with the ~~board's Pesticide Section~~department along with a GPS map of the application to the field within ten (10)

days of the date of application;

(iv) Applications made within four (4) miles of susceptible crops (defined as cotton when applying 2,4-D) must be done when the wind is blowing at least two miles per hour (2 m.p.h.) away from the susceptible crop;

(v)(a) Rice levee spraying shall not require a permit in Cross, Poinsett, Clay, Greene, Craighead, Crittenden, St. Francis, Lee, Phillips, and Mississippi counties west of the approximate north-south center line of Crowley's Ridge.

(b) However, subdivisions (e)(2)(D)(ii)(a) – (e) and (e)(2)(D)(iv) of this section must be complied with.

(c) The records for each application must be maintained by the producer for a period of ~~three (3)~~two (2) years and be made available to the ~~board~~ department upon request ~~by a board representative~~.

(d) The application device must:

(1) Generate a spray with a droplet spectrum such that no more than ten percent (10%) of the spray droplets are smaller than three hundred (300) microns;

(2) The boom width may not exceed ten feet (10');

(3) During application, the spray nozzle height may not exceed thirty inches (30") above the top of the levee; and

(4) The spray vehicle may not exceed eight miles per hour (8 m.p.h.).

(e) No 2,4-D esters may be used;

(3) In the remainder of the state, the following conditions shall apply:

(A) A buffer zone between the field to be treated and susceptible crops (susceptible crop is cotton when applying 2,4-D containing products) of four (4) miles for aerial application and one (1) mile for ground application shall be maintained;

(B) Applications made within four (4) miles of susceptible crops must be done when the wind is blowing at least two miles (2 m.p.h.) per hour away from the susceptible crop; and

(C)(i) Applications may be made within the applicable buffer zones if the

owner or supervisor of the sprayed or treated field has obtained a waiver from the producers of all susceptible crops within the buffer zone.

(ii) The waiver shall be developed by the ~~board~~department and provided to said producers by the owner or supervisor of the sprayed or treated field.

(iii) A copy of the waiver must be provided to the applicator who sprays or treats the field.

(iv) The applicator shall retain the record for a period of ~~three (3)~~two (2) years.

(v) When making an application within the applicable buffer zone, at the time of application, the wind must be blowing away from susceptible crops; and

(4)(A) Failure to comply with the requirements for a Class F product when using a Class F product will result in enforcement action being taken against the producer and the applicator in accordance with the board's penalty matrix.

(B) Any penalty mandated by the penalty matrix may have additional civil penalty added to it to bring the amount of the assessment up to the maximum amount allowed by law.

(f)(1) Any custom applicator who violates the buffer zones defined in subsection (e) of this section shall be subject to a civil penalty as prescribed by the penalty matrix for the violation plus one thousand dollars (\$1,000).

(2) However, the total civil penalty for one (1) violation may not exceed two thousand dollars (\$2,000).

(3) Failure to comply with the decontamination requirements of 2 CAR § 70-110(c)(3)(I) before making an application of a product with a Class A, Class B, Class C, or Class D designation inside a designated buffer zone for Class E and Class F products will be considered a buffer zone violation.

(g)(1) Products with this designation shall be applied in accordance with the application equipment set-up required for herbicide applications to field crops itemized in the rules written pursuant the Pesticide Use and Application Act, Arkansas Code § 20-20-201 et seq., as amended.

(2) Except that these conditions will apply, in addition to field crops, to:

- (A) Pastures;
- (B) Rights-of-way;
- (C) Drainage ditches; and
- (D) Brush and forest land.

(h) The wind velocity during the application shall not exceed eight miles per hour (8 m.p.h.), and the temperature may not exceed ninety degrees Fahrenheit (90° F).

(i)(1) Applications of products with this classification shall not be made unless the following condition exists:

(A)(i) For applications made before noon, the air temperature at the field of application at the beginning of the application must be a minimum of three degrees Fahrenheit (3° F) above the morning low measured at the applicator's air strip or mixing/loading facility.

(ii) If the applicator has knowledge that the temperature measurement at his or her air strip or mixing/loading facility would not be the same as a reading taken at the same time at the field of application, then all temperature readings must be taken at the field of application; and

(B)(i) For applications made after noon, the temperature at the field of application must not have decreased more than five degrees Fahrenheit (5° F) from the afternoon high measured at the applicator's air strip or mixing/loading facility.

(ii) If the applicator has knowledge that the temperature measurement at his or her air strip or mixing/loading facility would not be the same as a reading taken at the same time at the field of application, then all temperature readings must be taken at the field of application.

(2) All temperature measurements referenced above must be maintained by the grower as well as the applicator and be made available to the ~~board~~ department upon request.

(j) Enlist exemption.

(1)(A) Dow Agro-Sciences' products identified as Enlist One and Enlist Duo - premix of glyphosate and 2,4-D choline may be used on Enlist Weed Control System:

- (i) Soybeans;

- (ii) Cotton; and
- (iii) Corn.

(B) All board restrictions on 2,4-D containing products will apply except the following:

- (i) 2 CAR § 70-111(d);
- (ii) 2 CAR § 70-111(e)(1);
- (iii) 2 CAR § 70-111(e)(2);
- (iv) 2 CAR § 70-111(e)(3); and
- (v) 2 CAR § 70-111(h); and

(C) The application window in 2 CAR § 70-111(e) shall not apply.

(2) In addition to all product label requirements, the following conditions apply:

(A) At the time of application, the wind must be blowing away from adjacent sensitive areas and nontarget susceptible crops as identified by the product label;

(B) The wind speed during the application may not exceed ten miles per hour (10 m.p.h.);

(C) The volume median diameter (VMD) of the spray droplets must be greater than three hundred (300) microns; and

(D)(i) Tank mixes will not be permitted unless research data, from a source acceptable to the board, is provided.

(ii) This data must prove that the mix, when applied according to the product label and state restrictions, does not increase the driftable fines (those less than two hundred (200) microns) by more than ten percent (10%) over that of the product alone.

(iii) However, there will be a limit of no more than ten percent (10%) of the total mix's droplets to be smaller than two hundred (200) microns.

(iv) This tank mix requirement may be waived in part or in whole by the board if no entity can be identified as an acceptable source for development of the data.

(v) Where the product label is more restrictive than the board's restrictions, then the label must be complied with.

(3)(A) Ground applications of products with this classification shall not be made to Enlist seed technologies without commercial, noncommercial, and private applicators first completing new technology certification training.

(B) New technology certification training must be obtained through the University of Arkansas Cooperative Extension Service.

(C) Upon request proof of training must be provided to the ~~board~~department.

2 CAR § 70-112. Class G.

(a)(1) Products with this designation shall be used in accordance with:

(A) All other applicable federal and state laws and rules written pursuant thereto;

(B) The label registered with the State of Arkansas;

(C) The applicable restrictions identified for Class A, Class B, Class C, and Class D; and

(D) The following additional restrictions.

(2) Products assigned to this class include only those products:

(A) Packaged in containers one (1) gallon or larger;

(B) Labeled for agricultural use; and

(C) Used in row crop and rice production and commercial right-of-way treatment.

(b)(1) Class G products may not be applied in winds greater than ten miles per hour (10 m.p.h.), fifteen miles per hour (15 m.p.h.) if using a commercially available hooded sprayer.

(2) However, if the product label indicates a lesser wind speed should be used, then that wind speed must be used.

(c) Civil penalties assessed for each violation of the product label, applicable state or federal law, or the rules promulgated pursuant to these laws that involve a product

with this classification shall be assessed at the level indicated by the State Plant Board's Enforcement Response Rules, 2 CAR pt. 73, for a restricted-use product plus, where not otherwise forbidden by state or federal law, additional civil penalties may be added to bring the amount of the assessment up to the maximum amount allowed by law.

(d) For purposes of civil penalty assessment, products named to this classification shall be considered the same as federally restricted use products if not already designated as such.

(e) Failure to comply with these requirements will be a violation of this part.

2 CAR § 70-113. Class H.

(a)(1) Products with this designation shall be used in accordance with:

(A) All other applicable federal and state laws and rules written pursuant thereto;

(B) The label registered with the State of Arkansas;

(C) The applicable restrictions identified for Class A; and

(D) The following additional restrictions.

(2) Products assigned to this class include only those products packaged in containers of more than one quart (1 qt.), labeled for agricultural use.

(b) Dealer requirements.

(1)(A) Before selling, offering for sale, or distributing pesticides with this designation in packages of more than one quart (1 qt.), a dealer must be a licensed restricted use pesticides dealer.

(B) A dealer may sell, offer for sale, or distribute only those pesticides that are registered in the state.

(2)(A) Each branch of a license holding dealer which also sells or distributes these products must have a dealer's license.

(B) Firms or distributors who take orders for these products must secure a dealer's license, even though the order is placed with a dealer or manufacturer who holds a license, and even though no profit is made.

(3)(A) Dealers must keep a record of each sale or distribution of products with

this designation to commercial, noncommercial, private applicators, or dealers in containers of more than one quart (1 qt.) on forms available from or approved by the ~~State Plant Board~~department.

(B) Entries in the record shall be made at the time of sale or distribution and shall include the:

(i) Date of the purchase;

(ii) Name, address, and license or permit number of the purchaser;

and

(iii) Name and address of the delivery location.

(C) The complete brand name and quantity of the product shall also be recorded.

(D) These records shall be:

(i) Kept by the dealer for two (2) years from the date of sale; and

(ii) Made available for inspection by the ~~board or its~~representative department upon request.

(4)(A) The sale or distribution of products with this classification in containers of more than one quart (1 qt.) to any firm or person other than a dealer or applicator holding a current and valid license or permit is prohibited.

(B) Dealer must have a copy of the applicator's license on file.

(5) Nonresidents of Arkansas shall designate and maintain a resident agent in this state for service of process.

(c) Requirements for commercial, noncommercial, and private application of dicamba-containing pesticides.

(1) From July 1 through October 31 of each year, applications of products labeled for agriculture use that contain dicamba are prohibited except applications made for:

(A) Turf, ornamental, direct injection for forestry activities and home use are allowed year round; and

(B)(i) Pasture and rangeland are allowed year round.

(ii) However, such applications must maintain buffers required in

subdivision (c)(2) of this section.

(2) From April 16 through June 30, all applications for in-crop agricultural use:

(A) Must maintain a one-mile buffer, in all directions, from University of Arkansas and United States Department of Agriculture research stations;

(B) Are prohibited from using tank mixes of products containing the active ingredient glyphosate mixed with pesticides containing the active ingredient dicamba labeled for in-crop use; and

(C) During application, a one-fourth-mile buffer zone in all directions from non-dicamba-tolerant crops must be maintained and one-half-mile for all certified organic crops and commercially grown specialty crops (defined as a minimum of one thousand (1,000) plants or the average annual crop sales for the previous three (3) years exceeding twenty-five thousand dollars (\$25,000).

(3) From April 16 through October 31, applications of pesticides labeled for agricultural use that contain the active ingredient dicamba are prohibited for preplant (burndown) applications except:

(A) From April 16 through June 30, pesticides labeled for in-crop agricultural use, by ground, that contain the active ingredient dicamba and allow for the preplant (burndown) applications may be applied; and

(B) Such applications must maintain the requirements of buffers required in subdivision (b)(2) of this section.

(4) Training requirements.

(A)(i) Applications of products with this classification to dicamba-tolerant crops shall not be made without commercial, noncommercial, and private applicator first completing dicamba-specific training provided by a registrant of a dicamba product for use on dicamba-tolerant crops.

(ii) Upon request, proof of training must be provided to the ~~board~~department.

(B)(i) Applications of products with this classification to nondicamba crops or pasture and rangeland shall not be made without commercial, noncommercial, and private applicators first completing new technology certification training.

(ii) New technology certification training must be obtained through the University of Arkansas Cooperative Extension Service.

(iii) Upon request, proof of training must be provided to the ~~board~~department.

(C) Applicators must provide the proof of training required by subdivision (b)(4) of this section to pesticide dealers prior to purchase.

(5) Record keeping requirements.

(A) Applicators must maintain records of each application of products with this designation.

(B) Said records must be:

(i) Retained for a period of ~~three (3)~~two (2) years; and

(ii) Available for inspection by ~~a board representative~~the department.

(C) The records shall include at a minimum the following information:

(i) Name and address of the person or persons in control of the crops, plant, etc;

(ii)(a) Location of the crop, plants, etc. treated.

(b) Location description must include:

(1) County;

(2) Nearest town;

(3) Physical address, if available; and

(4) GPS reading or map coordinates of the primary entrance to the field;

(iii) Date, start time, and ending time of the application;

(iv)(a) Wind speed and direction at the start time and ending time of the application and type of instrument used to measure wind speed and direction.

(b) The location of instrument at time of reading (preferably "field of application") must also be recorded;

(v) Complete brand name and United States Environmental Protection Agency registration number of the material used;

(vi) Number of acres and type of crop to which the material was

applied;

(vii) (a) Type of equipment used.

(b) If the product was applied by a commercial applicator, record the firm's application equipment number assigned to the equipment used by the ~~board~~department; and

(viii) Name of the application vehicle operator.

(d) **Exemptions.**

(1) The licensing requirements of this part do not apply to:

(A) The United States Department of Agriculture, the University of Arkansas experiment stations, and other state or federal agencies;

(B) Ornamental and turf weed control;

(C) Company demonstrations with ground equipment; or

(D) Sales of fertilizer, soil conditioners, or similar products containing registered products with this designation and packaged for home use.

(2) Products with the designation that are not designated as restricted use products by the United States Environmental Protection Agency may be purchased from an Arkansas pesticide dealer for use outside the State of Arkansas without the dealer having to have a dealer's license or the purchaser having an applicator's license.

(3) Commercial, noncommercial, and private applicators that can provide proof of current certification and licensing from another state may purchase restricted use pesticides from a restricted use pesticide dealer licensed in Arkansas if the product is to be used outside of Arkansas.

2 CAR § 70-114. Class I.

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

~~Appendix A. Attachment 1~~ **Quinclorac Use Restrictions**

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/389/2CARpt.70-Attachment1.pdf>

The buffer zones in the table below shall apply to Quinclorac herbicide applications:

<u>Herbicide Treatment Options</u>	<u>Application Equipment</u>	<u>Buffer Zones</u>	
		<u>When winds are blowing in the direction of incorporated towns or commercial plantings of the solanaceae family.</u>	<u>When winds are NOT blowing in the direction of incorporated towns or commercial plantings¹ of the solanaceae family.</u>
<u>a. Water diluted spray of Quinclorac herbicide tank-mixed with emulsifiable concentrate (EC) formulation herbicides such as:</u> <u>- Stam M-4 EC - Arrololo 3+3 EC</u> <u>- Propanil EC - Ordram 8E</u> <u>- Abolish 8E - Bolero EC</u>	<u>Aircraft Spray</u> <u>Wind Speed</u> <u>3 to 8 mph</u>	<u>4 miles</u>	<u>1 mile</u>
	<u>Ground Spray</u> <u>Wind Speed</u> <u>3 to 8 mph</u>	<u>1 mile</u>	<u>1/2 mile</u>
<u>b. Water diluted spray of Quinclorac herbicide applied in water alone or tank-mixed with emulsifiable concentrate formulation free herbicides such as:</u> <u>- Basagran - Stam 80EDF</u> <u>- Blazer - Terra Propanil 80DF</u> <u>- Storm - Wham EZ, Super Wham</u> <u>- Londax - Pentagon 60 WDG</u>	<u>Aircraft Spray</u> <u>Wind Speed</u> <u>3 to 8 mph</u>	<u>1 mile</u>	<u>1 mile</u>
	<u>Ground Spray</u> <u>Wind Speed</u> <u>3 to 8 mph</u>	<u>1/2 mile</u>	<u>1/2 mile</u>

1. Exemption: In areas where cities have annexed blocks of agricultural land, water diluted sprays of Quinclorac may be used within or adjacent to the city limits, provided the application site is no closer than 1/2 mile to subdivisions when using ground equipment or 1 mile to subdivisions when using aircraft and no closer than 1/4 mile to established plants of the solanaceae family or established/emerged cotton.
2. No water diluted spray of Quinclorac herbicide shall be applied closer than 1/4 mile by any means to established/emerged cotton, noncommercial plantings of the solanaceae family, or closer than 1/2 mile by aircraft if the wind is blowing in the direction of such plants.
3. No water diluted spray of Quinclorac herbicide shall be applied closer than 1 mile by aircraft or 1/2 mile by ground equipment to established, certified commercial plantings of the solanaceae family (>1,000 plants each kind) statewide.

4. In addition to the above statewide requirements, the following additional restrictions shall apply to Poinsett County.
 - a. No water diluted spray of Quinclorac herbicide shall be applied in an area from one mile west of Highway #1 to one mile east of Highway #163 from the Craighead-Poinsett County line to the Cross-Poinsett County line.
 - b. Water diluted spray of Quinclorac herbicide shall be applied only by ground equipment in the area of Poinsett County from one mile west of Highway #1 to two miles west of Highway #1 and only by ground equipment in the area of Poinsett County from one mile east of Highway #163 to Ditch #10, from the Craighead-Poinsett County line to the Cross-Poinsett County line.
 - c. No water diluted spray of Quinclorac herbicide shall be applied within 1/2 mile with ground equipment or 1 mile by aircraft of commercial plantings of the solanaceae family and towns. This buffer is extended to one mile for ground application and two miles for aerial application when Quinclorac herbicide is mixed with emulsifiable concentrate formulation herbicides.
5. The buffer zones defined in paragraph one (1) (b) shall apply to tank mixes of water diluted sprays of Quinclorac and EC products for which the EC manufacturer has provided the Plant Board with atomization study data from a research entity acceptable to the Plant Board that shows that the product does not produce more “fines” (percent of total spray volume in droplets <105µm) than water.
6. All applications of Quinclorac shall be made in accordance with the applicable drift minimization recommendations of the Spray Drift Task Force.
7. Both air and ground application equipment shall be set up for application of Quinclorac in such a way that generation of spray droplets less than 105 microns in size is less than 5% of the total volume. The spray nozzle size classification must be designated as “coarse” by the British Crop Protection Council.
8. Quinclorac may not be sold to persons that do not possess a current Private, Commercial or Non-Commercial Applicator’s License.

2 CAR § 70-115. Class J.

- (a)(1) Products with this designation shall be used in accordance with:
- (A) All other applicable federal and state laws and rules written pursuant thereto;
 - (B) The label registered with the State of Arkansas;
 - (C) The following additional restrictions.

(b) Dealer Requirements.

(1)(A) Before selling, offering for sale, or distributing pesticides with this designation, a pesticide dealer must be licensed as a restricted use pesticide dealer.

(B) A restricted use pesticide dealer may sell, offer for sale, or distribute only those pesticides registered in the state.

(2)(A) Each branch of a license holding dealer which also sells or distributes these products must have a restricted use pesticide dealer's license.

(B) Firms or distributors who take orders for these products must secure a restricted use pesticide dealer's license, even though the order is placed with a dealer or manufacturer who holds a license, and even though no profit is made.

(3)(A) Restricted use pesticide dealers must keep a record of each sale or distribution of products with this designation to commercial, noncommercial, private applicators, or dealers.

(B) Entries in the record shall be made at the time of sale or distribution and shall include the:

(i) Date of the purchase;

(ii) Name, address, and license number of the purchaser;

(iii) Name and address of the delivery location;

(iv) Complete brand name;

(v) Quantity; and

(vi) EPA registration number

(C) These records shall be :

(i) Kept by the restricted use pesticide dealer for two (2) years from the date of sale; and

(ii) Made available for inspection by the department upon request.

(D) Restricted use pesticide dealers must have a copy of the applicator's license on file.

(4) Nonresidents of Arkansas shall designate and maintain a resident agent in this state for service of process.

(c) Requirements for commercial, noncommercial, and private applicators.

(1)(A) Use is prohibited in any county where black bears have been harvested since 2023, per the Arkansas Game and Fish Commission Black Bear Harvest Report.

(B) Use in all other counties is prohibited from April 1-November 30.

(2) Training requirements.

(A) Use of products with this classification shall not be made without the commercial, noncommercial, or private applicator first completing label specific training provided by the registrant of the product.

(B) Upon request, proof of training must be provided to the department.

(3) Record keeping requirements.

(A) Applicators must maintain records of each application of products with this designation.

(B) Said records must be:

(i) Retained for a period of two (2) years; and

(ii) Available for inspection by the department upon request.

(C) The records shall include at minimum the following information:

(i) Name and address of the person or persons in control of the pesticide(s);

(ii)(a) Location of the use.

(b) Location description must include:

(1) County;

(2) Nearest town;

(3) Physical address, if available; and

(4) GPS reading or map coordinate of the use

site;

(iii) Date, start time, and ending time of the application;

(iv) Complete brand name and United States

Environmental Protection Agency registration number of
the material used; and

(v) Name of the licensed applicator