

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY

CHAPTER 30. CONSUMER PROTECTION

**SUBCHAPTER 17. COMBINED PESTICIDE
PART 1. COMMERCIAL AND NON-COMMERCIAL CATEGORIES OF PESTICIDE APPLICATION**

35:30-17-1. License Categories

License categories of pesticide application are as follows:

- (1) 1a: Agricultural Plant Category - Includes the application of pesticides to agricultural crops, agricultural grassland, and noncrop agricultural land. This category does not include the production of trees for any purpose.
- (2) 1b: Agricultural Animal Category - Includes the application of pesticides to animals, including those in feedlots, sales barns, egg production facilities and the animal holding facilities. This excludes Doctors of Veterinary Medicine applying pesticides as drugs or medication during the course of their normal practice.
- (3) 2: Forest Pest Control Category - Includes the application of pesticides in forest nurseries, forest seed production areas, trees grown for the production of forestry products, and other forest areas.
- (4) 3a: Ornamental and Turf Outdoor Pest Control Category - Includes the application of pesticides within residential or business areas to lawns, ornamental trees and shrubs, including park areas, golf courses, and other recreational areas, except as defined under licensed categories 2, 3b-c, 7, and 8.
- (5) 3b: Interiorscape Category - Includes the application of pesticides to interior plantings inside structures (i.e. hospitals, buildings, shopping malls, etc.) excluding residential structures with the exception of common use areas of multiple residential structures (i.e. foyers, atriums, indoor swimming pools, management offices, meeting rooms, etc.) except as defined under licensed categories 3c, 7, and 8.
- (6) 3c: Nursery/Greenhouse Category - Includes the application of pesticides in nursery and greenhouse facilities and to fields except as defined under licensed categories 2 (Forest Pest Control).
- (7) 4: Seed Treatment Category - Includes the application of pesticides to seed for any purpose.
- (8) 5: Aquatic Pest Control Category - Includes the application of pesticides to standing or running water in man-made or natural impoundments, streams, etc. This excludes public health activities (e.g. mosquito control) and water in totally closed systems.
- (9) 6: Right-of-Way Category - Includes the application of pesticides for public road maintenance, power line maintenance, railroad right-of-way, storage tank areas, and other similar areas.
- (10) 7a: General Pest Control Category - Includes the application of pesticides within and immediately adjacent to a structure, except for fumigation activities, control of termites and other wood destroying organisms in or on a structure, and control of birds

or predatory animals. "Immediately adjacent to a structure" means not further than three (3) feet from the structure. Applications to restaurants are permitted in this category.

(11) 7b: Structural Pest Control Category - The application of pesticides for the purpose of controlling termites and other wood destroying organisms in or on a structure, including wood borers and fungus.

(12) 7c: Fumigation Category - The use of liberated gas within a structure or storage area, to include railcars, ships, etc., or the application of fumigants to soil.

(13) 8: Public Health Pest Control Category - The application of pesticides by local, state, federal or other governmental employees or commercial pesticide applicators in public health programs, to include municipal and other areawide mosquito control programs.

(14) 9: Regulatory Pest Control Category - Includes the application of pesticides by state, federal or other government employees for the control of designated regulated pests.

(15) 10: Demonstration and Research Pest Control Category - Includes persons engaged in the application of pesticides for scientific research or for the purpose of demonstrating pesticide products or methods of application.

(16) 11a: Bird and Vertebrate Animal Pests Control Category - The application of pesticides for the control of birds or vertebrate animals pests and subject to the rules of the Oklahoma Department of Wildlife Conservation and the Wildlife Services Division of the Board.

(17) 11b: Predatory Animal Control Category - The application of pesticides for the control of predatory animals and subject to the rules of the Oklahoma Department of Wildlife Conservation, and the Wildlife Services Division of the Board.

(18) 12a: Pressure Facility Timber Treating Category - Includes the treatment of wood in a pressure treating facility by the impregnation or application of chemical solutions for the purpose of retarding or preventing deterioration or destruction by insects, fungi, bacteria, or other wood destroying organisms.

(19) 12b: Ground Line Utility Pole Timber Treating Category - Includes the ground line treatment of utility poles with chemical solutions for the purpose of retarding or preventing deterioration or destruction by insects, fungi, bacteria, or other wood destroying organisms.

(20) 12c: Construction Industry Timber Treating Category - Includes the application of chemical solutions to wood members of structure which will be covered by paint, varnish, or similar covering for the purpose of retarding or preventing deterioration or destruction by insects, fungi, bacteria, or other wood destroying organisms.

(21) 12d: ~~Home Owner~~ Homeowner Timber Treating Category - Includes the application of chemical solutions to wood constructions around the home, including decks, for the purpose of retarding or preventing deterioration or destruction by insects, fungi, bacteria, or other wood destroying organisms.

(22) 13: Antimicrobial Category - Includes applications of an antimicrobial pesticide intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.

(23) 14a: Manned Aerial Category - Includes the application of pesticide with a plane or helicopter.

(24) 14b: Unmanned Aerial Category - Includes the application of pesticide with an unmanned aerial vehicle.

(25) 1415: Specialty Category - Includes any area of pesticide application not defined in Category 1 thru ~~12~~ 14 when the pesticide to be used is classified as restricted.

PART 3. CERTIFICATION, CONDUCT OF EXAMINATIONS, AND RECERTIFICATION

35:30-17-4. Examination of applicants for certification

(a) The written examination for certification of commercial and noncommercial applicators shall include two (2) phases. Phase I shall consist of general knowledge common to all licensed categories and shall be successfully completed before examination is attempted in any license category. Phase II shall consist of specific knowledge for each licensed category. An applicant may test in as many different licensed categories as desired. An applicant shall successfully complete a Phase II examination within twelve (12) months of passing the Phase I examination. Failure to meet the twelve (12) month deadline shall require an applicant to re-take the Phase I examination.

(b) The written examination for certification of commercial and noncommercial applicators shall comply with the competency standards provided in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 40 CFR Section 171.103 and shall be computer based and conducted at a site determined by the board.

(c) A practical examination shall also be required for commercial and noncommercial applicators in the following categories: Structural Pest, General Pest, Fumigation, and Food Processing. An individual shall successfully complete the practical examination within twelve (12) months of passing the Phase II written examination in the above categories. Failure to meet the twelve (12) month deadline shall require an individual to re-take the Phase II written examination.

(d) The practical examination shall be conducted at the training facility at Oklahoma State University and includes the successful completion of an approved training program which demonstrates a thorough knowledge in the handling of pesticides, labels and labeling requirements, storage, transportation, mixing, application, disposal, insect biology and safety. The facility at Oklahoma State University meets the following conditions for treatment in the Structural Pest Category: crawl space, voids, and a concrete floor, garage floor, or patio slab.

(e) A service technician shall be certified upon successful completion of a written service technicians examination. An individual shall not act, do business, or advertise as a service technician unless a service technician identification has been issued by the Board. A service technicians' identification shall be issued in the name of the licensed entity. The licensee shall return the service technician identification to the Board upon termination of the employee. A service technician identification shall be valid for five (5) years unless suspended, canceled, revoked, or the service technician is no longer employed by the licensed entity. Recertification may be required at any time by the Board. The Department may issue a service technician identification upon completion of the following:

- (1) A determination is made by the Department that the applicant has successfully completed the written examination;
 - (2) The licensed entity provides a completed service technician identification application form at the time of testing; and
 - (3) All appropriate fees are paid at the time of testing.
- (f) The written examination for service technician shall be computer based and conducted at a site determined by the board.
- (g) Private applicators shall complete a certification form and an education program or written examination as required by the Board. Private applicators in the Fumigation category shall be required to complete the certification form and a closed book written exam and successfully complete the Fumigation practical at the training facility at Oklahoma State University within twelve (12) months of passing the Fumigation written exam.
- (h) The written examination for private applicators shall comply with the competency standards provided in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 40 CFR Section 171.105 and shall be computer based and conducted at a site determined by the board.
- (i) An individual shall not act, do business, or advertise as a certified applicator unless all qualifications and standards required by the Board have been met. A certificate in any category shall be valid for five (5) years unless suspended, canceled, or revoked. Recertification may be required by the Board, but shall not exceed one recertification in a five (5) year period.
- (j) Successful completion of any written examination shall be a score of 70% or greater.
- (k) The Department may require that an individual seeking a certified applicator or service technician certification demonstrate the capability to read and write with sufficient proficiency to comprehend the content and instructions of a pesticide label.

PART 5. PREREQUISITES FOR LICENSING

35:30-17-10. Application insurance requirements

- (a) The Board shall not issue an applicator's license until the applicant or agent has furnished evidence of financial responsibility. A liability insurance policy or certification shall protect persons who may suffer legal damages as a result of the pesticide operations of the applicant. The policy need not apply to damages or injury to agricultural crops, plants, or land being worked on by the applicant.
- (b) With the exception of aerial pesticide applicators, pesticide applicators obtaining liability insurance pursuant to this section shall file a certificate of insurance with the Department, verifying insurance in an amount of not less than \$50,000 bodily injury, \$100,000 bodily injury per occurrence, and \$50,000 property damage. The provisions of this section with regard to "per occurrence" are specifically intended to be interpreted per occurrence, rather than per claimant. The insurance obtained pursuant to this section shall insure against liability for damage, loss, or injury, including chemical drift or trespass, suffered by any person or persons, resulting from the application of any pesticide. A current certificate of insurance ~~must~~ shall be filed with each initial and subsequent renewal registration.
- (c) Aerial pesticide applicators obtaining liability insurance pursuant to this section shall file a certificate of insurance with the Department, verifying insurance in an amount of not less than \$100,000 bodily injury, \$300,000 bodily injury per occurrence, and \$100,000 property damage. The provisions of this section with regard to "per occurrence" are specifically

intended to be interpreted per occurrence, rather than per claimant. The insurance obtained pursuant to this section shall insure against liability for damage, loss, or injury, including chemical drift or trespass, suffered by any person or persons, resulting from the application of any pesticide. A current certificate of insurance must be filed with each initial and subsequent renewal registration.

(d) Liability insurance shall be maintained at all times during the licensed period. The Board shall be notified by the insurer fifteen (15) days prior to any applicant's request for a reduction or cancellation of the liability insurance. The total and the aggregate of the insurer for all claims shall be limited to the face amount of the liability insurance policy. The Board may accept a liability insurance policy with a deductible clause in an amount not exceeding \$5,000 for all applicators. If the applicant has not satisfied the requirement of the deductible amount in any prior legal claim, the deductible clause shall not be accepted by the Board unless the applicant has furnished the Board with additional liability insurance which satisfies the amount of the deductible.

(e) The Department may approve a liability self-insurance policy with a deductible clause that exceeds the requirements of subsection (d) of this section if the applicant has:

(1) Been continuously engaged in business for not less than three (3) years immediately preceding the application;

(2) At least one hundred (100) employees (all states included); and

(3) At least One Million Dollars (\$1,000,000.00) in net assets.

An applicant may request a waiver of some or all of these requirements subject to a security deposit or other insurance requirements as determined by the Department.

(f) If the furnished liability insurance becomes unsatisfactory, the applicant shall upon notice immediately provide new liability insurance. Upon failure to do so, the Board shall cancel the license and give notice. It shall be unlawful to engage in the business of applying pesticides until the insurance is brought into compliance and the license is reinstated by the Board.

(~~f~~) (g) Application of a pesticide specifically excluded on the insurance policy shall be considered working without a license.

PART 10. MINIMUM STANDARDS FOR PESTICIDES

35:30-17-22.2. Pesticide enforcement

The Board is authorized to enter any premise during normal business hours for the purpose of:

(1) Determining whether pesticides or devices comply with the provisions of the law.

(2) Procuring samples of pesticides and devices.

(3) Examining and obtaining copies of records and documents relative to the shipment, manufacture, application of, or sale of pesticides or devices.

(4) Monitoring and evaluating the application and effects of application of any pesticide registered as a Special Local Need 24(c), Experimental Use Permit, or Emergency Exemption Section 18 of the Federal Pesticide Law (FIFRA).

(5) Enforcing the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq.

PART 11. STANDARDS FOR APPLICATION OF PESTICIDE

35:30-17-25. Pesticide application by certified applicators, noncertified applicators, service technicians, and private applicators

- (a) A certified applicator shall be on site to use any pesticide when required by the label or labeling.
- (b) A certified applicator shall be on site to supervise any pesticide application by a non-service technician.
- (c) A service technician shall be on site to make the actual application of any pesticide unless a certified applicator is present at the job site.
- (d) A certified applicator may be a service technician in other categories for a licensed company without completing the service technician's examination.
- (e) Certified applicators, noncertified applicators, service technicians, and private applicators shall be a minimum of eighteen (18) years of age to purchase restricted use pesticides and to make pesticide applications.
- (f) (1) A noncertified applicator shall receive approved safety training from a certified applicator or qualified trainer prior to application of a restricted use pesticide as outlined in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 40 CFR Section 171.201. Employers of noncertified applicators shall keep the following records for a minimum of two (2) years:
 - (A) The printed name and signature of the noncertified applicator;
 - (B) The name of the person who provided the approved training;
 - (C) The date the training was completed; and
 - (D) The title or description of the training.
- (2) The provisions of this subsection shall not apply to a noncertified applicator making an application of restricted use pesticide on a family farm.
- (3) For the purposes of this section a "noncertified applicator" shall mean an applicator who is not a certified applicator, service technician, or private applicator.

PART 15. MINIMUM STANDARDS FOR TERMITE WORK FOR EXISTING STRUCTURES

35:30-17-54. Minimum standards for termite work

- (a) The minimum standards for termite work ~~at~~ for existing structures shall be followed, unless the exceptions contained in Section 35:30-17-69.2 apply.
- (b) All termite treatment pesticide applications at one location shall be completed using the same brand of termiticide.

PART 17. MINIMUM STANDARDS FOR TERMITE WORK FOR PRECONSTRUCTION (PRETREATS) AND NEW CONSTRUCTION

35:30-17-73. Concrete Slabs

- (a) All pretreatment pesticide applications shall follow the pesticide label instructions including the application rates and methods. Treatments using less than label recommended concentrations at higher volume or higher concentrations at reduced volume applications are prohibited for pre-construction treatments. All pretreatment pesticide applications at one

location shall be completed using the same brand of termiticide. A written contract shall be provided that conforms with all requirements for contracts issued in the Structural Pest Category. In addition, the contract shall include the total square footage treated, the total linear feet treated, and any additional information required.

(b) Pretreatment of main slab areas (including attached garages) is as follows:

(1) Termiticide shall be applied at the rate specified on the label and in accordance with label instructions to the entire area to be covered by concrete, for the establishment of horizontal and/or vertical barriers.

(2) Horizontal barriers shall be established.

(3) Vertical barriers shall be established by trenching or trenching and rodding through the bottom of the trench and at the rate prescribed by the label. When trenching cannot be performed due to elements of construction (i.e. coarse aggregate fill, rebar, etc.) the treatment may be accomplished by rodding the chemical at a rate specified on the label and shall be stated in the contract.

(4) Treatment shall not be made when the soil or fill is excessively wet or when rain is imminent.

(5) Precautions shall be taken to prevent disturbance of the treated areas by human or animal contact or prolonged exposure to the weather.

(6) Immediately after completion of treatment to the main slab area, each termite pretreatment shall be stenciled or a sticker or tag permanently affixed to one of the stubouts in an area which will be readily accessible. The stencil, sticker, or tag shall identify the company, date of treatment, and termiticide used.

(c) Pretreatment of adjacent slabs, i.e., porches, patios, entrance pads, walkways, driveways, etc., shall be as follows:

(1) Termiticide shall be applied at the rate specified on the label and in accordance with label instructions for application, to the adjacent slabs which abut the main structure.

(2) Treatment and precautions shall meet the requirements in (b)(2) and (b)(3) of this Section.

(d) Pretreatment of outside foundations shall be as follows:

(1) Treatment shall be applied to the soil by trenching or trenching and rodding into the bottom of the trench around the entire outside foundation of the structure after the final grade has been established. This treatment shall be performed within 30 days of notification of completion of landscaping or one year from the date of completion of construction, whichever comes first.

(2) Where trenching is not possible due to rocks, concrete, gutters, etc., the treatment may be accomplished by rodding the chemical at a rate specified on the label and shall be stated in the contract.

(3) Where outside foundations (stem walls) have 12" or more of exposed concrete extending above the outside final grade, the outside foundation treatment may be omitted.

(e) Pretreatment of crawl space construction shall be made in the same manner as described in the minimum standards for existing structures (SEE PART 15 of this Chapter).

(f) Any pretreatment that does not meet all of the minimum standards for pretreatments under concrete slab or crawl space is considered "Partial Pretreats" and is not acceptable. If a portion of a structure is not treated through no fault of the applicator, it will be stated in the pretreat

documentation and the contract signed by the contractor (home builder), and include specific reasoning why the area was not treated.

(g) Pesticide applicators conducting pretreatment applications shall issue Form NPCA-99b to the builder as an attachment to the contract.

(h) Before a concrete slab is poured, each new construction baiting system site shall be identified by a sticker or tag permanently affixed to one of the stubouts in an area which is readily accessible. The sticker or tag shall include the company name and the name of the baiting system that will be installed.

(i) All new construction pesticide applications shall be made within three (3) months after completion of construction with baiting systems approved by the Department which meet minimum specification requirements for the treatment. All new construction treatments shall follow pesticide label instructions, including application rates and methods, and the Minimum Standards Parts 9 and 18.

(j) Borate products shall not be used as a solitary termite treatment application. Borate products may be applied in addition to a liquid termite pretreatment or a new construction termite baiting system.

SUBCHAPTER 45. SCRAP METAL DEALERS

35:30-45-9. Purchases, sales, and records

(a) A scrap metal dealer shall conduct business and maintain records of all business transactions in a manner consistent with the provisions of the Oklahoma Scrap Metal Dealers Act.

~~(b) A scrap metal dealer purchasing a vehicle from any person shall be required to record the make, model, license tag number and vehicle identification number of the purchased vehicle. A person selling a vehicle to a scrap metal dealer shall be required to present to the dealer the title of the vehicle or a certificate of ownership form, as approved by the Oklahoma Tax Commission and available at the Oklahoma Tax Commission or through a motor license agent, in addition to signing a declaration of ownership as required by Section 11-92 of Title 2 of the Oklahoma Statutes. The provisions of this subsection shall not apply to sales, purchases or other transfer of vehicles between scrap metal dealers and licensed automotive dismantlers and parts recycler.~~

~~(c)~~ Scrap Metal Dealers using an online recording method for all record keeping shall use Leads Online, www.leadsonline.com as the internet-based reporting method.