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**CLEMSON UNIVERSITY**

**STATE CROP PEST COMMISSION**

CHAPTER 27

Statutory Authority: 1976 Code Section 46-9-40

Article 17. South Carolina Pesticide Control

27-1070. Definitions

27-1077. Certification and Licensing of Private Applicators

27-1078. Certification and Licensing of Commercial Applicators

27-1079. Certification and Licensing of NonCommercial Applicators

**Synopsis:**

The State Crop Pest Commission has previously promulgated regulations dealing with South Carolina Pest Control, specifically contained in Article 17, Chapter 27 of the South Carolina Rules and Regulations. These amendments deal with defining certain terms, a new license category for soil fumigation, and clarifications with respect to certification and recertification requirements.

**Instructions:**

These are amendments to Article 17, Chapter 27, South Carolina Rules and Regulations. Delete the current regulations 27-1070, 27-1077, and 27-1078. Replace each with the regulation shown below.

**Text:**

27-1070. Definitions.

 A. Director means the Director of the Division of Regulatory and Public Service Programs, Clemson University.

 B. Department is the Department of Pesticide Regulation, a department within the Division of Regulatory and Public Service Programs, Clemson University, and the successor to the Department of Fertilizer and Pesticide Control and the Plant Pest Regulatory Service.

 C. Business means any person, as defined in the Pesticide Control Act, engaging in activities regulated by the Act for hire or remuneration of any kind, including trade or barter, on the property of another. Business activity includes performing structural pest control activities, as defined below.

 D. Performing structural pest control activities includes, but is not limited to, the use of any pesticide in, on, under, or immediately adjacent to any structure with the intent to prevent, destroy, repel or otherwise mitigate any pest or engaging in any other activities intended or claimed to mitigate pests in structures including the installation of devices. Structural pest control activities also includes the soliciting, advertising, or making of sales proposals in any form for any services involving the use of pesticides in, on, under, or immediately adjacent to any structure with the intent to prevent, destroy, repel, or otherwise mitigate any pest. (Licensing is mandatory in this category as per Section 27-1085 L, below.)

 (1) The use of EPA-registered disinfectants for ordinary or disaster-recovery cleaning purposes is not a structural pest control activity, provided that no claims are made for the control of pests in the structure.

 (2) The application of EPA-registered cleaning agents to the interior of ductwork as part of an ordinary cleaning process is not a structural pest control activity, provided that no claims are made for the control of pests in the structure or in the ductwork.

 (3) The installation of animal traps in structures for the control of nuisance vertebrate pests other than commensal rodents (e.g. rats and mice) is not a structural pest control activity.

 (4) Making an inspection for or issuing the Official South Carolina Wood Infestation Report, which must be issued by a licensed applicator as detailed below, is a structural pest control activity.

 (5) Making pesticide treatment recommendations is a structural pest control activity.

 (6) The inspection of a structure for the purposes of rendering an opinion as a consultant or expert regarding structural damage due to insects or other organisms, the adequacy of previous treatment or inspection, or similar issues regulated under these Regulations is not a structural pest control activity.

 E. Warranty sales means the sale of renewable or non-renewable warranty coverage or contracts against structural pests, excluding guarantees of accuracy associated with the issuance of the Official S.C. Wood Infestation Report, which are not supported by any treatment or control measures. The re-issuance of warranties in the purchasing company’s name following the purchase of one company by another is not a warranty sale, nor is the reinstatement of warranties on previously treated structures.

 F. Branch office means any physical location at which business records are maintained separate from the main business office, or, if no records are maintained there, any location which three (3) or more employees utilize as their base of daily activities.

 G. Termiticide means any pesticide or treated article intended to protect a structure against subterranean termites. The definition includes baits, all conventional soil-applied termiticides regardless of their mode of action, wood-treatment products such as borates when applied during or after construction, and construction materials impregnated with insecticides and intended to protect the structure from attack. It also includes stainless steel mesh, uniform-size sand or gravel materials, or other physical barriers for which termite control, termite detection, or termite mitigation claims are made.

 H. Pretreat and pretreatment refer to the subterranean termite control treatment performed on a building while it is under construction. This treatment is normally performed in several stages as the building is completed.

 (1) For liquid treatments a pretreat is considered to begin on the day that the first application of chemical is made.

 (2) For pretreatments performed with bait systems or physical barriers the treatment is considered to have begun when bait or monitoring stations are first installed.

 (3) For pretreatments conducted with borate or other wood-treatment products the treatment is considered to have begun at the time the first application to the structure is made.

 I. Pesticide use means the distribution, holding for distribution or sale, sale, mixing, loading, transportation, application, or storage of any material for which pesticidal claims are made.

 J. Performing public health pest control activities includes, but is not limited to, the use of any pesticide with the intent to prevent, destroy, repel, or otherwise mitigate any pest of public health significance or engaging in any other activities intended or claimed to mitigate pests of public health significance for compensation or as a government employee on the property of another, including the installation of devices. Public health pest control activities also includes the soliciting, advertising, or making of sales proposals in any form for any services involving the use of pesticides or devices with the intent to prevent, destroy, repel or otherwise mitigate any pest of public health significance. (Licensing is mandatory in this category as per Section 27-1085 L, below.)

 (1) The use of EPA-registered disinfectants for ordinary or disaster-recovery cleaning purposes is not a public health pest control activity regulated by this Section.

 (2) The installation of animal traps in or around privately-owned structures for the control of vertebrate pests of public health significance (e.g., rats and mice) is not a public health pest control activity regulated by this Section.

 (3) The installation of animal traps and the distribution of poisons intended to control rat and mouse populations in or around municipal streets, utilities, and public buildings or in other public areas such as recreational and industrial parks, schools, public hospitals, and similar areas is a public health pest control activity regulated by this Section.

 (4) The installation of ultraviolet flying insect traps, air curtains, screens, and similar devices is not a public health pest control activity regulated by this Section unless the devices emit or employ pesticides or public health protection claims are made.

 K. Performing turf and ornamental pest control activities includes, but is not limited to, the use of any pesticide with the intent to prevent, destroy, repel or otherwise mitigate any pest of publicly or privately owned turf or ornamental plantings for compensation or as a government employee on the property of another, including the installation of devices. Turf and ornamental pest control activities also includes the soliciting, advertising, or making of sales proposals in any form for any services involving the use of pesticides or devices with the intent to prevent, destroy, repel, or otherwise mitigate any pest of turf or ornamental plantings. (Licensing is mandatory in this category as per Section 27-1085 L, below.)

 (1) The application of pesticides to ornamental plants in a greenhouse or nursery is not a turf and ornamental pest control activity regulated by this Section.

 (2) The installation of irrigation systems and similar devices, including chemigation systems, is not a turf and ornamental pest control activity regulated by this Section.

 (3) The application of fertilizers not mixed with pesticides or herbicides is not a turf and ornamental pest control activity regulated by this Section, nor is the spray or broadcast application of grass seed, mulch, or mixtures not containing materials registered as pesticides or for which pesticidal claims are made.

 (4) Maintenance activities such as mowing, trimming, watering, and landscaping are not turf and ornamental pest control activities regulated by this Section, even if claims of weed reduction or plant health and growth are made.

 L. Performing aquatic pest control activities includes, but is not limited to, the use of any pesticide with the intent to prevent, destroy, repel or otherwise mitigate any pest of publicly or privately owned waters, including ponds, lakes, oceans, rivers, streams, reservoirs, and impoundments, whether or not they are navigable, for compensation on the property of another or as a government employee, including the installation of devices. Aquatic pest control activities also includes the soliciting, advertising, or making of sales proposals in any form for any services involving the use of pesticides or devices with the intent to prevent, destroy, repel, or otherwise mitigate any pest of publicly or privately owned waters, including ponds, lakes, oceans, rivers, streams, reservoirs, and impoundments, whether or not they are navigable, for compensation on the property of another. (Licensing is mandatory in this category as per Section 27-1085 L, below.)

 (1) The application of pesticides to ornamental aquatic plants in a greenhouse or nursery is not an aquatic pest control activity regulated under this Section.

 (2) The installation of aeration systems and similar devices or the use of mechanical harvesters to remove vegetation is not an aquatic pest control activity regulated under this Section.

 (3) The application of fertilizers not mixed with pesticides or herbicides is not an aquatic pest control activity regulated under this Section, nor is the use of dyes to suppress the growth of aquatic vegetation.

 (4) The installation of devices to exclude, prevent, destroy, repel or otherwise mitigate aquatic pest animals is not an aquatic pest control activity regulated under this Section.

 M. Structure and building mean any edifice to which activities regulated under these regulations are applied or proposed to be applied, including the area underneath and immediately adjacent to the foundation.

 N. All pronouns and any variations thereof in these Regulations shall be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity of the person or entity may require.

 O. “Inactive license” means a commercial applicator’s license or a non-commercial applicator’s license which the Department has, after a qualified request from the license holder, placed in that status as per Section 27-1078 O, below.

 P. “Continuing Certification Unit” (CCU) is a measure of the educational value of a course of study judged by the Department to be suitable for meeting the recertification requirements of Section 27-1078 N, below.

27‑1077. Certification and Licensing of Private Applicators.

 A. No person younger than eighteen (18) years-old will be licensed as a private applicator. In hardship cases, however, persons under the age of eighteen (18) may be licensed at the discretion of the Director after appropriate consultations with the affected parties or their representatives.

 B. Private applicators are not required to demonstrate financial responsibility.

 C. Persons holding a private applicators license may use or directly supervise the use of a pesticide which is classified for restricted use, but only for the production of an agricultural commodity on property owned or rented by them or their employer. Private applicators may apply pesticides on the property of another person only if the application is performed without compensation, or if the only compensation provided is the trading of personal services between producers of agricultural commodities.

 D. Private applicators must accomplish all of the following prior to being certified and licensed:

 (1) Complete an application form published by the Department.

 (2) Complete a prescribed training program and pass an exam dealing with pesticides.

 (3) Pay the pro-rated portion of the prescribed normal fee for the remainder of the licensing period in which the license is issued.

 E. Persons holding valid commercial and noncommercial applicator licenses, if they desire, may obtain a private applicator’s license simply by submitting the proper application form and the prorated fee for the remainder of the licensing period to the Director. Additional training is not required.

 F. Private applicator licenses are issued in five (5) year licensing periods or recertification blocks. Blocks end in 2004, 2009, 2014, etc. Licenses are pro-rated and expire at the end of the block in which they are issued. During each recertification block after the one in which the license is issued each private applicator must successfully complete five (5) Continuing Certification Units (CCUs) of training. Alternatively, the private applicator may complete the initial licensing requirements and re-apply to the Director for a license. All Continuing Certification Units (CCUs) must be approved in advance by the Department.

 G. All applications of Restricted Use Pesticides to any crop or commodity while it is held in a commercial storage or processing facility must be made by or under the direct supervision of a commercial applicator certified in Category 1C.

27‑1078. Certification and Licensing of Commercial Applicators.

 A. No person younger than eighteen (18) years-old will be licensed as a commercial applicator.

 B. Commercial applicators must demonstrate to the Director the financial responsibility required by law, before the Director may issue a license.

 C. Continuous financial responsibility is an on‑going responsibility of the commercial applicator, and no commercial applicator may receive, purchase, apply, use, supervise, or conduct other application-related activities without the required financial responsibility in place.

 (1) Category 3, 5, and 8 applicators must maintain financial responsibility in the amount of $50,000 with an annual aggregate claims limit of not less than $100,000.00 before performing any pest control activities, including advertising, as specified in Section 27-1085 L, below.

 (2) Category 7 applicators must maintain comprehensive general liability financial responsibility of not less than $100,000.00 combined single limit liability coverage, which must include both bodily injury and property damage coverage.

 (3) Failure to maintain the requisite financial responsibility in any category shall cause the immediate and automatic suspension of the commercial applicator’s license until such time as current financial responsibility is satisfactorily demonstrated to the Director. If the applicator fails to re-instate their financial responsibility within three months, or if their license expires sooner, the license is automatically revoked and must not be restored until the applicator has again completed the certification process, including the exams.

 D. The insurance or surety company must be one licensed to do business in South Carolina, and must give at least ten days written notice by certified mail to the Department as a condition precedent to the cancellation by the surety or insurer, material change, or cancellation by the insured.

 E. The above notwithstanding, commercial applicators are not relieved from liability for damages to persons or property caused by pesticides applied by or under the supervision of the licensee whether or not such use conforms to the requirements of the product label and the rules and regulations promulgated by the Director.

 F. Financial Responsibility may be demonstrated by:

 (1) A current public liability and property damage insurance policy and or certificate of insurance (issued by an insurance company). Binders are not acceptable.

 (2) A certificate of self‑insurance issued by the Workman’s Compensation Commission. (Although this certificate is specifically designed to cover workman’s compensation claims, the Department considers this certificate indicates sufficient assets to cover the liability requirements of the law).

 G. All commercial applicators must provide a phone number where the commercial applicator can normally be reached during normal working hours. If this number changes, the Department must be notified within three (3) working days.

 H. Persons holding a commercial applicator’s license may use restricted use pesticides, but only for work in the specific categories in which the commercial applicator has demonstrated competence. Commercial applicator’s licenses will be issued for the following categories of commercial pesticide-application operations:

 (1) Agricultural Pest Control (Category 1).

 (a) Plant (Category 1A).

 (b) Animal (Category 1B).

 (c) Stored Product Pest Control (Category 1C).

 (d) Soil Fumigation (Category 1D).

 (2) Forest Pest Control (Category 2).

 (3) Ornamental and Turf Pest Control (Category 3).

 (4) Seed treatment (Category 4).

 (5) Aquatic Pest Control (Category 5).

 (6) Right‑of‑way Pest Control (Category 6).

 (7) Industrial, Institutional, Structural and Health-Related Pest Control (Category 7).

 (a) General (Category 7A).

 (b) Fumigation (Category 7B).

 (8) Public Health Pest Control (Category 8).

 (9) Regulatory Pest Control (Category 9).

 (10) Demonstration and Research Pest Control (Category 10).

 (11) Aerial Applicator (Category 11).

 (12) Miscellaneous (Category 12).

 (a) Wood Preservative Treatment (Category 12A).

 (b) Anti-fouling paint (TBT) Application (Category 12B).

 (c) Small Animal Pest Control (Category 12C).

 (d) Sewer Line Pest Control (Category 12D).

 I. Commercial applicators must accomplish the following prior to being certified and licensed:

 (1) Pass the Core examination, a basic test dealing with the minimum amount of subject matter considered essential to the safe use of restricted use pesticides.

 (2) Pass a separate Category examination for each of the practice areas listed above.

Note: passing the core exam without passing a category exam does not entitle the applicant to use or supervise the use of Restricted Use Pesticides or perform pest control activities in categories for which licensing is required.

 (3) Complete an application form published by the Department.

 (4) Fees for the examinations, licensing, and for certification in additional categories beyond the initial category of certification shall be as prescribed.

 J. Aerial Applicators.

 (1) All aerial applicators of pesticides (including transient aircraft pilots) are subject to the same requirements outlined in paragraph D (1) above. All aerial applicators must be certified and licensed by the Department before applying restricted use pesticides by air within the State.

 (2) These regulations concerning aerial applicators do not in any way negate the regulations promulgated by the Aeronautics Division of the SC Department of Commerce or its successors.

 (3) Aircraft must be secured against theft and tampering in a manner as prescribed by the Director after appropriate consultations with the affected parties or their representatives.

 (4) Chemicals, use-dilutions, and their containers both on and off the aircraft must be secured in a manner as prescribed by the Director after appropriate consultations with the affected parties or their representatives.

 K. Commercial applicator licenses shall expire on December 31st of each year.

 L. Commercial applicator licenses are renewable annually by re-application to the Director prior to January 1st and payment of the prescribed annual fee. A 25% penalty will be charged for renewal applications filed after January 1st. Reexamination is not required for licenses renewed before April 1st as long as the recertification requirements of Section N, below, and continuous financial responsibility has been maintained as per Section 27-1078 C, above.

 M. Commercial applicators holding valid licenses who desire to have a private applicator=s license may submit the proper application form and the prescribed fee to the Director. A private applicator license will be issued with no additional training required.

 N. Recertification periods for commercial applicators are five (5) year periods, beginning January 1st of 1994 and ending on December 31st of 1998, 2003, 2008, and every five (5) years thereafter. During each recertification period after the one in which the license is issued each Commercial Applicator must accumulate no less than the number of Continuing Certification Units (CCUs) specified below for each category in which they are licensed, up to a maximum of 24 CCUs. Alternatively the applicator may complete the initial licensing requirements and re-apply to the Director for a license.

 (1) All courses of study for which CCUs are requested must be submitted to the Department at least fifteen business days in advance of the date of the training. On-line, correspondence, or other self-study programs must be submitted for approval at least fifteen business days before being offered to participants. Submission of a program to the Department does not guarantee that it will receive CCUs.

 (2) CCUs will be awarded as either category-specific or core-competency CCUs. Licensed applicators in categories in which licensing is mandatory must accumulate category-specific CCUs as indicated below before renewing their licenses. Licensed applicators holding certification in more than one category in which licensing is mandatory must accumulate the required number of category-specific CCUs for each mandatory category, up to a maximum of 24, as above.

 (3) Once the required number of category-specific CCUs has been accumulated, either core-competency CCUs or additional category-specific CCUs may be used to fulfill the remaining CCU requirements.

 (4) The Department will award CCUs based on its evaluation of the content of the course of study.

 (5) Applicators certified in Category 7A must accumulate 20 CCUs in each recertification period, no less than 12 of which must be specific to Category 7A.

 (6) Applicators certified in Category 7B must accumulate 10 CCUs in each recertification period, no less than 3 of which must be specific to Category 7B.

 (7) Applicators certified in Category 3, 5, or 8 must accumulate 10 CCUs in each recertification period, no less than 3 of which must be specific to each category.

 (8) Applicators certified in other categories must accumulate 10 CCUs in each recertification period.

 (9) Applicators may obtain no more than one-half of the total number of required category-specific CCUs and no more than one-half of the core-competency CCUs during the last year of any recertification block. Applicators may “carry over” to the next recertification block any CCUs they obtain in excess of the minimum required, both category-specific and core-competency, during the final year of any recertification block.

 O. The Department may at its discretion place a license into an inactive status at the request of the license holder for a period of not more than 5 years. During the inactive period the license holder is relieved of the requirement to show financial responsibility.

 (1) Holders of inactive licenses must meet the recertification requirements set forth above, and must renew their licenses annually.

 (2) No pesticide use or other activities regulated by this Section may be conducted or supervised using an inactive license.

27‑1079. Certification and Licensing of Noncommercial Applicators.

 A. No person younger than eighteen (18) years-old will be licensed as a noncommercial applicator.

 B. Noncommercial applicators are not required to demonstrate the same financial responsibility required of commercial applicators.

 C. Persons holding a noncommercial applicator’s license may use restricted use pesticides, but only for work in the specific categories, as outlined for commercial applicators, in which the applicator has demonstrated competence. These licenses are issued to permit qualified governmental employees to perform their official duties on the job.

 (1) Noncommercial applicators must submit an application form published by the Department and must pass the same set of examinations required of the commercial applicators.

 (2) Noncommercial applicators’ licenses shall expire on December 31st of each year.

 (3) Noncommercial applicators’ licenses are renewable annually by re-application to the Director prior to January 1st. Reexamination is not required for licenses renewed before April 1st as long as the recertification requirements of Paragraph 6, below, are complied with.

 (4) Noncommercial applicators holding valid licenses who desire to have a private applicator’s license may submit the proper application form and the prescribed fee to the Director. A private applicator license will be issued with no additional training required.

 (5) Recertification periods for noncommercial applicators are five year periods, beginning January 1st of 1994 and ending on December 31st of 1998, 2003, 2008, and every five (5) years thereafter. Recertification requirements for noncommercial applicators shall be the same as for commercial applicators.

**Fiscal Impact Statement:**

No additional state funding is requested. The Commission estimates that no additional costs will be incurred by the State and its political subdivisions in complying with the proposed revisions.

**Statement of Rationale:**

This regulation is necessary to enhance the ability of the Commission to maintain and enhance competence for licensed pesticide applicators.