

NOTICE OF PROPOSED RULE DEVELOPMENT

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

DIVISION OF AGRICULTURAL ENVIRONMENTAL SERVICES

RULE CHAPTER TITLE: RULE CHAPTER NO.:

Licensed Pesticide Applicators and Dealers 5E-9

RULE TITLES: RULE NOS.:

Pesticide Applicator Licenses 5E-9.019

Categories of Licensure for Pesticide Applicators 5E-9.021

Procedures for Pesticide Applicator Certification, Licensure,
and License Renewal 5E-0.026

Procedures for Pesticide Dealer Licensure and License Renewal 5E-9.027

Procedures for Pesticide Applicator Recertification 5E-9.029

Pesticide Applicator Records 5E-9.032

Pesticide Aircraft Registration, Liability Insurance/Surety Bond,
Security, Inspection, Storage, Recordkeeping, Area-of-Application
Information, Transactions, and Forms 5E-9.036

PURPOSE AND EFFECT: The purpose of the rule amendment is to restrict the aerial category to commercial and public pesticide applicators; require aerial applicators who make pest management decisions to be licensed in all work-related categories; require pesticide certification exams to be given in English; delete the requirement for aerial applicators to file proof of insurance since it is now provided with each aircraft registered; clarify the affidavit and late fee requirements for pesticide applicator license renewal; reduce the number of continuing education units (CEUs) required for renewal of private applicator licenses from 8 to 4; harmonize terminology in reference to providers of CEU programs with terminology used by the Bureau of Entomology and Pest Control; modify the restricted use pesticide recordkeeping requirements to require a start and end time for each application; provide for the use of GPS coordinates or longitude/latitude points in pesticide applicator records to delineate treatment

sites; specify the pesticide application records that must be maintained to meet the requirements of section 487.081(6)(b), F.S., to qualify for exemption from proceedings by the Department of Environmental Protection; specify the length of time certificates of insurance must be maintained by aircraft registrants; update forms and addresses; add web site references; clarify confusing language; and correct inconsistencies within the rule chapter.

SUBJECT AREA TO BE ADDRESSED: Management of certification and training activities of Pesticide Applicators in the State.

SPECIFIC AUTHORITY: 487.0435, 487.046, 487.048, 487.049, 487.160 570.07(23).

LAW IMPLEMENTED: 487.0435, 487.044, 487.046, 487.048, 487.049, 487.160.

IF REQUIRED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW:

TIME AND DATE: May 24, 2004 9:00 a.m.

PLACE: AES Conference Room, Florida Department of Agriculture and Consumer Services Complex, 3125 Conner Blvd., Bldg. 8, Tallahassee, FL 32399-1650.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT: Mr. Dale Dubberly, Chief, Bureau of Compliance Monitoring, Department of Agriculture and Consumer Services, Division of Agricultural Environmental Services, 3125 Conner Blvd., Bldg. 8. (L29), Tallahassee, Florida 32399-1650; telephone (850) 488-8731.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

5E-9.019 Pesticide Applicator Licenses.

(1) License types. Each individual licensed as a pesticide applicator must be licensed in one of three license types and must be licensed in a minimum of one primary category. License types are:

~~(1) License types.~~

(a) through (c) No change.

(2) Restrictions on license types.

(a) Aerial application. No license type is valid for aerial application of pesticides unless the license includes the aerial category. The aerial category is available only to commercial and public applicators.

(b) and (c) No change.

Specific Authority. 487.0435, 570.07(23) FS. Law Implemented 487.0435 FS. History–New 6-9-94, Amended 7-2-95, 2-21-02, _____.

5E-9.021 Categories of Licensure for Pesticide Applicators.

(1) Description of primary categories.

(a) through (p) No change.

(q) Category 11 - Aerial Application. This category is applicable to individuals who apply any pesticide from an aircraft. This category is valid for licensure of ~~private,~~ public, and commercial applicators for treatment sites that may legally (according to product label direction) be treated by aerial application under Chapter 487, F.S.

(r) and (s) No change.

(2) No change.

(3) Requirements and restrictions on category licensure.

(a) Private applicators who apply restricted use pesticides by ground application must be licensed in Category 1C - Private Applicator Agricultural Pest Control. ~~Private applicators who~~

~~apply pesticides aerially must be licensed in Category 11—Aerial Application.~~ No other primary or secondary categories are available for licensure of private applicators.

(b) No change.

(c) Public and commercial applicators must be licensed in all primary and secondary categories applicable to the types of pesticide applications to be made. Exceptions: 1) Category 1C does not apply to public or commercial applicators; 2) Individuals licensed in Category 9 need not be licensed in Category 1D or 1E; 3) Aerial applicators who make no ground applications and no pest management decisions, but only apply pesticides aerially at the request of another party who has made the necessary determinations regarding pest management and pesticide application, do not need to be licensed in any category except Category 11. Aerial applicators who make determinations regarding pest management and pesticide application must be licensed in the aerial category and all other categories applicable to the treatment site(s).

Specific Authority 487.0435, 570.07(23) FS. Law Implemented 487.0435 FS. History—New 6-9-94, Amended 7-2-95, 9-24-98, 6-27-99, 2-21-02, _____.

5E-9.026 Procedures for Pesticide Applicator Certification, Licensure, and License Renewal.

(1) Certification. All individuals seeking pesticide applicator licensure shall demonstrate competency in the responsible use of pesticides by successfully completing the appropriate pesticide applicator examination(s) specified in this chapter for each classification of licensure. All examinations shall be written in the English language and administered by the department or its authorized agents as written, closed-book examinations. Examinations will not be translated into other languages orally, in writing, or in any other form. ~~However, the department shall accommodate individuals seeking licensure in other languages through examination translation or other comparable examination procedures. Licensure based on examination in a language other than English will limit the use of pesticides requiring licensure to those products which~~

~~bear or provide complete labels and labeling in the language in which examined.~~ Examinations shall be undertaken and completed by the examinee without assistance from other individuals. The department shall set passing scores and determine if the certification standards have been met for the desired licensure. Examination scores shall be valid for 12 months after the date of examination.

(2) Licensure. If the certification standards have been met, the department shall provide the appropriate license application, form DACS-13312, Rev. 05/04, ~~DACS-130312~~ for a private applicator license, form DACS-13313, Rev. 05/04, ~~DACS-130313~~ for a public applicator license, or form DACS-13310, Rev. 05/04, ~~DACS-130310~~ for a commercial applicator license, to the individual. The following materials must be received by the department before a pesticide applicator license shall be issued: documentation of certification earned within the previous 12 months; completed application; completed designation of registered agent, form INHSE-30, Eff. 6/92, if applicable; copy of pilot's license ~~proof of insurance or surety bond~~ (aerial category licensure only); proof of age, if requested; and appropriate fee. License applicants may designate one or more authorized purchasing agents by submitting a completed Authorized Purchasing Agent Designation, DACS-13352, Rev. 05/04, along with the license application. Materials shall be submitted to the Pesticide Certification Office, P.O. Box 6710, Tallahassee, Florida 32314-6710. Pesticide applicator licenses shall expire at the end of the month no more than four (4) years from issue date.

(3) License Renewal. It shall be the responsibility of each licensee to renew the license at the time of expiration. Requests for renewal of pesticide applicator licenses shall be made by submitting to the department the following materials: a signed request for license renewal; documentation of recertification; completed designation of registered agent, form INHSE-30, Eff. 6/92, if applicable; ~~proof of insurance or surety bond (aerial category licensure only)~~; proof of age, if requested; and payment of the appropriate license fee. Materials shall be submitted to the Pesticide Certification Office at the above address and must be received no later than the

license expiration date for the license to be renewed with continual licensure. If a license is renewed after it expires, the applicator must submit a notarized affidavit stating that no restricted use pesticides have been used since the license expired. If a license is renewed more than 60 days after it expires, a \$50 late fee is also required. A license that has been expired for more than one year may not be renewed. Renewed pesticide applicator licenses shall expire no more than four (4) years from the previous expiration date.

(4) Forms. The following forms are hereby incorporated by reference. Forms DACS-13312, Rev. 05/04~~DACS-130312~~, DACS-13310, Rev. 05/04~~DACS-130310~~, and DACS-13313, Rev. 05/04~~DACS-130313~~, and DACS-13352, Rev. 05/04 may be downloaded from the web site <http://www.safepesticideuse.com> or obtained from the Florida Department of Agriculture and Consumer Services, Pesticide Certification Office, 3125 Conner Boulevard, Building 8 (L29) MD-1 (L33), Tallahassee, Florida 32399-1650, telephone (850) ~~488-3314~~ 488-6838. Form INHSE-30, Eff. 6/92, may be obtained from the Florida Department of State, Division of Corporations, 409 E. Gaines Street, Tallahassee, Florida 32399, telephone (850) 487-6051.

(a) Application for Private Applicator License (DACS-13312, Rev. 05/04~~DACS-130312, Rev. 2/98~~), Florida Department of Agriculture and Consumer Services.

(b) Application for Public Applicator License (DACS-13313, Rev. 05/04~~DACS-130313, Rev. 2/98~~), Florida Department of Agriculture and Consumer Services.

(c) Application for Commercial Applicator License (DACS-13310, Rev. 05/04~~DACS-130310, Rev. 2/98~~), Florida Department of Agriculture and Consumer Services.

(d) Authorized Purchasing Agent Designation (DACS-13352), Rev. 05/04, Florida Department of Agriculture and Consumer Services.

(e) ~~(d)~~ Designation of Registered Agent and Registered Office for a Nonresident Restricted-Use Pesticides Licensee (INHSE-30, Eff. 6/92), Florida Department of State. Specific Authority 487.0435, 487.046, 570.07(23), FS. Law Implemented 487.044, 487.046, 487.049, FS. History--New 6-9-94, Amended 7-2-95, 9-24-98,_____.

5E-9.027 Procedures for Pesticide Dealer Licensure and License Renewal.

(1) Licensure. Requests for pesticide dealer licensure shall be made by submitting a completed pesticide dealer license application, for DACS-13337, Rev. ~~05/041/02~~, and the appropriate license fee to the Pesticide Certification Office, P.O. Box 6710, Tallahassee, Florida 32314-6710. Pesticide dealer licenses shall expire at the end of the month one (1) year from issue date.

(2) No change.

(3) Forms. The following form is hereby incorporated by reference: Application for Pesticide Dealer License (DACS-13337, Rev. ~~05/041/02~~). This form may be downloaded from the web site <http://www.safepesticideuse.com> or obtained from the Florida Department of Agriculture and Consumer Services, Pesticide Certification Section, 3125 Conner Boulevard, Building 8 (L29), Tallahassee, Florida 32399-1650, telephone (850) 488-3314.

Specific Authority 487.048(1), 570.07(23) FS. Law Implemented 487.048(1) FS. History—New 6-9-94, Amended 7-2-95, 9-24-98, 2-21-02, _____.

5E-9.029 Procedures for Pesticide Applicator Recertification.

(1) through (2) No change.

(3) Effective January 1, 2005, all applicators recertifying by means of CEUs must earn 4 CEUs approved for the general standards of pesticide use and safety (core material) plus the following number of CEUs approved for each specific license category to be renewed:

PRIMARY CATEGORIES	CEU'S REQUIRED
Category 1A1 - Agricultural Row Crop Pest Control	8
Category 1A2 - Agricultural Tree Crop Pest Control	8
Category 1B - Agricultural Animal Pest Control	4
Category 1C - Private Applicator Agricultural Pest Control	4 8
Category 1D - Soil and Greenhouse Fumigation	4
Category 1E - Raw Agricultural Commodity Fumigation	4

Category 2 - Forest Pest Control	8	
Category 3 - Ornamental and Turf Pest Control	12	
Category 4 - Seed Treatment	4	
Category 5A - Aquatic Pest Control	16	
Category 5B - Organotin Antifouling Paint Pest Control	4	
Category 6 - Right-of-Way Pest Control	8	
Category 7A - Wood Treatment	4	
Category 7B - Chlorine Gas Infusion	4	
Category 7C - Sewer Root Control	4	
Category 9 - Regulatory Pest Control		12
Category 11 - Aerial Application	16	
Category 20 - Regulatory Inspection and Sampling	4	
Category 21 - Natural Areas Weed Management	16	
SECONDARY CATEGORIES		CEU'S REQUIRED
Category 10 - Demonstration and Research	4	

~~The Ornamental and Turf Pest Control and Aquatic Pest Control categories may be renewed with 8 CEU's until January 1, 2000.~~

(4) through (7) No change.

(8) CEU program approval. The department shall approve professional meetings or seminars for granting of continuing education units (CEUs) in pesticide use and safety through execution of an agreement between the department and the education provider ~~sponsoring organization~~ and provided the seminar or meeting and sponsor comply with the criteria set forth below. The agreement shall clearly stipulate the education provider's ~~sponsoring organization's~~ responsibilities and the department's authority to withhold credits for any seminar or meeting determined not to be in compliance with the approved criteria or the points specified in the agreement. Criteria for allocation of CEUs and procedures for program approval and granting of

CEUs to individual licenses are specified below.

(9) CEU program criteria. The following specifications shall be met before a meeting or seminar shall be considered for approval:

(a) The education provider ~~sponsoring organization~~ shall submit a written or electronic request for approval to grant CEUs on form DACS-13326, Rev. 05/041/02, or in an electronic format prescribed by the department. The completed form or electronic request must be received by the department no later than two (2) weeks prior to the date of the program, unless a different time frame is approved by the department on a case by case basis, based on circumstances beyond the control of the education provider ~~sponsoring organization~~.

(b) A program agenda indicating the start time, duration, instructor or speaker, and description of each program segment for which CEU approval is requested shall be submitted with form DACS-13326, Rev. 05/041/02. The description of each program segment must be sufficient for verification of content and applicability.

(c) No change.

(d) Documentation attesting that the instructors or speakers possess the expertise required to impart the specified information to the attendees shall be submitted with form DACS-13326, Rev. 05/041/02.

(e) The education provider or an authorized designee ~~sponsoring organization~~ shall distribute an official record of attendance, form DACS-13325, Rev. 05/041/02, provided by the department, to each licensee in attendance and shall monitor attendance to ensure these records are accurate. The education provider or an authorized A designee of the ~~sponsoring organization~~ shall sign the record of attendance forms to verify each licensee's attendance.

(f) No change.

(10) No change.

(11) Procedure for determining CEUs.

(a) No change.

(b) A written or electronic copy of the program request ~~form~~ shall be returned to the education provider ~~sponsoring organization contact person~~ with notification of CEU credit approval.

(12) Procedure for granting CEUs to licensees.

(a) and (b) No change.

(c) The education provider or an authorized designee ~~contact person or program trainer~~ shall complete and sign the appropriate section of the record of attendance form to verify each licensee's attendance.

(d) through (f) No change.

(g) The licensee is responsible for ensuring that the CEUs required for license renewal are earned according to guidelines specified in this chapter. The licensee is also responsible for maintaining the completed record of attendance forms (form DACS-13325, Rev. 05/041/02) and submitting these records to the department at the time of request for license renewal.

(13) Forms. The following forms are hereby incorporated by reference. These forms may be downloaded from the web site <http://www.safepesticideuse.com> or obtained from the Florida Department of Agriculture and Consumer Services, Pesticide Certification Section, 3125 Conner Boulevard, Building 8 (L29), Tallahassee, Florida 32399-1650, telephone (850) 488-3314.

(a) Request for Granting Continuing Education Units (CEUs) for Renewal of Pesticide Applicator Licenses and Certificates (DACs-13326, Rev. 05/041/02).

(b) Record of Attendance for Continuing Education Units (CEUs) (DACs-13325, Rev. 05/041/02).

Specific Authority 487.049, 570.07(23), FS. Law Implemented 487.049, FS. History--New 6-9-94, Amended 7-2-95, 9-24-98, 6-28-99, 2-21-02, _____.

5E-9.032 Pesticide Applicator Records.

(1) Licensed pesticide applicators shall maintain records relating to the application of all

restricted use pesticides. Such records shall consist of the following information for each application:

(a) through (b) No change.

(c) Date, start time, and end time of treatment;

(d) Location of treatment site, which may be recorded using any of the following

designations:

1. County, range, township, and section;

2. An identification system utilizing maps and/or written descriptions which accurately identify the location and distinguish the treatment site from other sites;

3. The identification system established by the United States Department of Agriculture found at 7 CFR 110, which utilizes maps and numbering system to identify field locations; ~~or~~

4. The legal property description; or

5. Global Positioning System (GPS) coordinates or longitude/latitude points that delineate the treated area.

(e) through (j) No change.

(2) through (10) No change.

(11) To meet the requirements of section 487.081(6)(b), F.S., individuals must keep the same record information required in paragraph (1). Such records must be maintained in a manner accessible by department representatives and shall be maintained indefinitely by the property owner or leaseholder.

Specific Authority 487.160, 570.07(23), FS. Law Implemented 487.160, FS. History--New 6-9-94, Amended 7-2-95, 9-24-98,_____.

5E-9.036 Pesticide Aircraft Registration, Liability Insurance/Surety Bond, Security, Inspection, Storage, Recordkeeping, Area-of-Application Information, Transactions, and Forms.

(1) Registration. Each aircraft used for aerial application of any pesticide must be

annually registered with the department with proof of insurance or surety bond. Application for registration shall be on form DACS-13354, Rev. 05/04~~New 1/02~~, provided by the department. The completed registration form and proof of insurance or surety bond shall be submitted to the Pesticide Certification Office, 3125 Conner Boulevard, Blvd., Building Bldg- 8 (L29), Tallahassee, Florida 32399-1650. The registration form ~~period~~ shall be submitted to the d Department on or before June 30 of each year and shall not exceed the time period covered by proof of insurance or surety bond.

(2) Proof of Insurance or Surety Bond. Proof of insurance or surety bond shall consist of:

(a) The deposit with the department of a surety bond in favor of any person or persons who may suffer damage or injury as the result of the aerial application of any pesticide made from the registered aircraft. Said surety bond shall be a minimum of \$100,000 and shall be executed by a corporate surety company authorized to conduct business in Florida. The department shall evaluate and determine the adequacy of all such bonds before acceptance. When the aircraft is removed from aerial application operation, a said bond shall be returned after a period of six months following date of notice of withdrawal, provided such withdrawal shall not release said surety from liability existing hereunder during the time of aerial application at the time of the effective date of such withdrawal; or

(b) The filing of a certificate of insurance, verifying insurance in an amount of not less than \$100,000 property damage and \$300,000 bodily injury coverage per occurrence, insuring the registered aircraft against liability for any damage, loss, or injury, including chemical drift or trespass, suffered by any person or persons, resulting from the aerial application of any pesticide made from the registered aircraft. A deductible clause of \$1,000 shall be acceptable. A current certificate of insurance must be filed with each initial and subsequent renewal registration. Current certificates of insurance or copies thereof shall be maintained in the aircraft registrant's possession from the date the aircraft is registered, ~~or~~ until two (2) years after

the certificate expires or two (2) years after the registration is withdrawn.

(3) No change.

(4) Security. Each aircraft used for aerial application of any pesticide shall be secured when not in use. Secured storage shall include the aircraft being: within a locked building, locked in place securely, mechanically disabled from flying, or any other reasonable method which ~~prevents or deters~~ would prevent or deter theft or unauthorized use.

(5) Storage. All pesticides on the premises owned or controlled by any aerial applicator shall be stored and maintained in a manner such that they are not accessible to unauthorized persons. Secured storage shall include: fences with a minimum 6 feet height; door locks; valve locks; electronic security systems; disabling of mobile storage units; blocking of access, ingress or egress; or any other reasonable method which prevents or deters theft or unauthorized use. ~~fences with a minimum 6 feet height, door locks, valve locks, electronic security systems, disabling of mobile storage units, blocking of access, ingress or egress; or any other reasonable method to prevent or deter theft or unauthorized use.~~ Buildings used to store pesticides must be of rigid construction so unauthorized entry can not be achieved without the use of heavy machinery or equipment. If a portable building is used for storage of pesticides, the building must be secured in place so it can not be towed or otherwise removed by unauthorized persons.

(6) Transactions. Any person who buys, sells, rents, leases, or transfers ownership ~~purchase, sale, rental, leasing, or transfer of ownership~~ of an aircraft that is registered or required to be registered with the department pursuant to subsection (1) above shall report the transaction ~~be transmitted~~ to the department within 24 hours of the transaction using one of the following forms: ~~on~~ (1) Report of Aircraft Transaction, Form DACS-13355, Rev. 05/04; (2) Ownership Declaration and Sales and Use Tax Report on Aircraft, Form DR-42A, Rev. 03/02; or (3) Aircraft Bill of Sale, Form AC 8050-2 (09/92). Exception: a person who buys, rents, leases, or otherwise obtains ownership or use of an aircraft for a purpose other than application of fertilizer, pesticides, or seed in Florida is not required to register the aircraft with the department.

~~(1) Florida Department of Revenue form DR-42 Rev-06/99 Ownership Declaration and Sales and Use Tax Report on Aircraft or (2) Aircraft Bill of Sale Form AC 8050-2 (09/92) or (3) Report of Aircraft Transaction Form DACS-13355, New 1/02 within 24 hours of the transaction.~~

(7) Recordkeeping. Aerial applicators shall maintain records relating to the application of each pesticide during a declared emergency. Such records generated during the emergency shall be retained for a period of two (2) years and shall be maintained in a manner that is accessible by the department upon request. Records shall consist of the following information for each application:

(a) Name, FDACS pesticide applicator license number, and FAA license number of the licensee responsible for the pesticide application;

(b) Date, start time and end time of treatment;

(c) Location of treatment site, which may be recorded using any of the following designations:

1. County, range, township and section;

2. An identification system utilizing maps and/or written descriptions which accurately identify the location and distinguish the treatment site from other sites;

3. The legal property description; or

4. Global Positioning Satellite (GPS) coordinates or Longitude/Latitude points

which delineate the treated area; ~~area~~.

(d) Name of the person requesting or authorizing the application; ~~application~~.

(e) Aircraft manufacturer, make and model; ~~model~~.

(f) FAA aircraft registration number; and

(g) Originating airport/airstrip ~~airports/airstrip~~.

(8) Area-of-Application Information. The information listed in (7)(a) through (7)(g) is required only when a declaration of an Executive Order pursuant to the emergency powers granted to the Governor or the Commissioner of Agriculture is made, declaring an emergency in

the State of Florida. Such information shall be provided and filed with the department
Department in a manner determined by the department.

(9) Forms. The following forms are hereby incorporated by reference. These forms may be downloaded from the web site <http://www.safepesticideuse.com> or obtained from the Florida Department of Agriculture and Consumer Services, Pesticide Certification Office, 3125 Conner Boulevard, Building 8 (L29), Tallahassee, Florida 32399-1650, telephone (850) 488-3314.

(a) Application for Aircraft Registration (DACS-13354), Rev. 05/04~~New 01/02~~, Florida Department of Agriculture and Consumer Services.

(b) Ownership Declaration and Sales and Use Tax Report on Aircraft (DR-42A ~~DR-42~~), Rev. 03/02 ~~06/99~~, Florida Department of Revenue.

(c) Aircraft Bill of Sale, ~~Sale~~ AG Form AC 8050-2 (09/92), U.S. Department of Transportation, Federal Aviation Administration.

(d) Report of Aircraft Transaction (DACS-13355), Rev. 05/04~~New 1/02~~, Florida Department of Agriculture and Consumer Services.

(10) Upon written request by an authorized department representative, an aircraft registrant ~~a licensed aerial applicator~~ who has aerial insurance as the selected form of financial responsibility shall make available the certificates of insurance or copies thereof required to be maintained under this rule for period of time when aerial applications are made and shall permit the authorized representative to copy of photograph the documents. The original documents shall be maintained by the aircraft registrant ~~applicator~~.

Specific Authority 487.046, 570.07(23) FS., Chapter 2001-360, Laws of Florida. Law Implemented 487.046 FS., Chapter 2001-360, Laws of Florida. History–New 6-9-94, Amended 7-2-95, 9-24-98, 6-9-02_____.