

NAVAJO NATION
PESTICIDE ACT

TITLE ____, NAVAJO NATION TRIBAL CODE
CHAPTER ____. THE NAVAJO NATION PESTICIDE ACT

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SUBCHAPTER 1. GENERAL PROVISIONS.

101. Title.

This Act may be referred to as the "Navajo Nation Pesticide Act."

102. Purpose.

The purpose of this Act is to promote the protection of the health and welfare of the public and the environment by providing for the safe use and handling of pesticides within the Navajo Nation.

103. Definitions.

Except as specifically defined herein, the terms used in this Act (Chapter) shall be given the same meaning as the identical terms are given in the Federal Insecticide Fungicide and Rodenticide Act, as amended, 7 U.S.C. 136 "FIFRA," and the federal regulations promulgated pursuant to such Act.

A. Applicator:

- (1) Certified Applicator - The term "certified applicator" means any individual who is certified by the States of Arizona, New Mexico or Utah and who is licensed by the Director or his/her designee as authorized to use or supervise the use of any pesticide which is classified for restricted use. All applicators of restricted use pesticides must be certified pursuant to the requirements under Subchapter 4 of this Chapter.
- (2) Private Applicator - The term "private applicator" means a pesticide applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person. This term includes persons who use or supervise the use of restricted use pesticides on any lands of the Navajo Nation including lands of the Navajo Nation for purposes of producing any agricultural commodity for themselves, their families or households.
- (3) Commercial Applicator - The term "commercial applicator" means a pesticide applicator (whether or not he is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purposes or on any property other than as provided by paragraphs (2) or (4) herein.

- (4) Public Applicator - The term “public applicator” means a pesticide applicator who uses or supervises the use of any pesticide which is classified for restricted use on any lands within the Navajo Nation including lands of the Navajo Nation in his capacity as an employee, official, or agent of the Navajo Nation, the United States, or any other government or subdivision thereof. This term does not include those applicators acting on behalf of the business enterprises of the Navajo Nation.
 - (5) Under the direct supervision of a certified applicator - the term “under the direct supervision of a certified applicator” means a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is immediately available if and when needed, as defined in Section 407 of this Chapter, unless otherwise prescribed by its labeling.
- B. Device - The term “device” means any instrument or contrivance other than a firearm which is intended for trapping, destroying, repelling or mitigating any pest or any other form of plant or animal life, other than man and other than bacteria, viruses or other microorganisms on or in any living thing other than plants, but does not include equipment used for the application of pesticides when sold separately therefrom, or traps used to control predators or rodents or sterilization using dry heat or steam.
- C. EPA - The term “EPA” means the U.S. Environmental Protection Agency.
- D. Executive Director - The term “Executive Director” means the Executive Director of the Navajo Nation Environmental Protection Agency, or his/her designee.
- E. FIFRA - The term "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136, *et seq.*
- F. Label and Labeling:
- (1) The term “label” means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
 - (2) The term “labeling” means all labels and all other written, printed, or graphic matter,
 - a. accompanying the pesticide or devices at any time, or
 - b. to which reference is made on the label or in literature

accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health and Human Services, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

- G. NNEPA - The term "NNEPA" means the Navajo Nation Environmental Protection Agency.
- H. Navajo Nation - The term "Navajo Nation" means:
- (1) all land within the exterior boundaries of the Navajo Indian Reservation or of the Eastern Navajo Agency or of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments;
 - (2) all land held in trust by the United States for, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for, the use or benefit of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indians as such; and
 - (3) all other land over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.
- I. Navajo Nation Council - The term "Navajo Nation Council", means the governing body of the Navajo Nation as set forth in 2 N.T.C. § 101.
- J. Pesticide - The term "pesticide" means:
- (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and
 - (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant: Provided, that the term "pesticide shall not include any article (1) (a) that is a "new animal drug" within the meaning of Section 201(w) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 321(w)), or (b) is an animal drug that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or (2) that is an animal feed within the meaning of Section 201(x) of such Act (21 U.S.C. § 321(x)) bearing or containing an article covered by clause (1)(a)

or (b) of this provision.

- K. Pesticide Dealer - The term “pesticide dealer” means any person who is engaged in the business of distributing, selling, offering for sale, or holding for sale any pesticide classified for restricted or general use pursuant to FIFRA.
- L. Resources Committee - The term “Resources Committee” means the Resources Committee of the Navajo Nation.
- M. Restricted Use Pesticide - The term “restricted use pesticide” means a pesticide that is classified for restricted use under the provisions of Section 3(d)(1)(C) of FIFRA or by NNEPA.
- N. State - The term “State” means the States of Arizona, New Mexico, or Utah. Portions of the Navajo Nation lie within all three states. When the term “State” is used herein it shall be used as a reference for the particular state in which the relevant portion of the Navajo Nation may be located, unless otherwise noted.
- O. Unreasonable adverse effects on the environment - The term “unreasonable adverse effects on the environment” means any unreasonable risks to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

104. Applicability.

- A. Except as otherwise provided in this section, the provisions of this Chapter shall apply to all persons and property within the Navajo Nation.
- B. Subject to the provisions of subsections (C) and (D) of this section, the provisions of this Chapter shall not apply to any person or property where, but only to the limited extent that, such application would be in violation of any valid waiver of jurisdiction or covenant not to regulate or otherwise exercise jurisdiction over such person or property.
- C. Notwithstanding the provisions of subsection (B) of this section, the provisions of this Chapter shall apply to any person who has submitted an application for a certification or license pursuant to this Chapter.
- D. Nothing in this chapter shall excuse the required performance of any act as set out in any other applicable law or regulation of the Navajo Nation or limit the jurisdiction of the Navajo Nation.

105. Authority of Executive Director.

A. General Responsibilities.

The Executive Director of the Navajo Nation Environmental Protection Agency is responsible for administering this Chapter, and is hereby authorized to exercise all of the legal authority necessary for this purpose, including developing plans and strategies related to the use of pesticides on the Navajo Nation. The Executive Director may delegate authority to the Navajo Nation Pesticides Program to insure that the requirements of this Chapter and the regulations promulgated under the Chapter are met. In addition, the Executive Director may designate the Pesticides Program as the lead program in developing and implementing a Navajo Nation groundwater management plan, to protect the quality of groundwater throughout the Navajo Nation from contamination by agricultural chemicals. The Pesticides Program would act in cooperation with other NNEPA programs and with EPA. The Executive Director also may delegate authority to the Pesticides Program to develop a plan for implementing the Worker Protection Standard for pesticide workers and handlers and to administer the Navajo Nation Endangered Species Plan in cooperation with EPA and the U.S. Fish and Wildlife Service.

B. Rules and Regulations.

- (1) The Executive Director is authorized to promulgate such rules and regulations from time to time as may be necessary to carry out the provisions of this Chapter. Subject to subsection (3) of this section, such rules and regulations may include:
 - a. regulations governing the determination of penalties, denials, suspension or revocation of certifications or licenses;
 - b. rules and procedures governing appeals pursuant to Subchapter 6 of this Chapter; and
 - c. regulations governing administration of this Chapter by the Executive Director.
- (2) Subject to subsection (3) of this section, proposed rules and regulations shall be published for public review and comment for at least thirty (30) days prior to their adoption. Rules and regulations shall be effective in accordance with their terms after review and approval by the Resources Committee.
- (3) Upon adoption of an Administrative Procedure Act by the Navajo Nation Council, the provisions of such Act shall supersede and apply instead of the provisions of subsection (2) of this section, and the provisions of subsection (1) of this section where they are inconsistent.

- (4) The effectiveness and enforceability of the provisions of this Chapter shall not be dependent upon the adoption of regulations pursuant to subsection (1) of this section.

106. Construction.

- A. The provisions of this Chapter shall be liberally construed to fulfill the intent and purposes of this Chapter, and so as not to conflict with applicable law of the United States.
- B. Nothing contained in this Chapter shall be construed to diminish, limit or otherwise adversely affect any right or remedy otherwise held or available to the Navajo Nation or its members under other applicable law.

107. Severability.

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of this Chapter and the application of such provision to other persons or circumstances shall remain unaffected, and to this end the provisions of this Chapter are declared to be severable.

SUBCHAPTER 2. PROHIBITED ACTS.

201. Pesticide Applicators.

No pesticide applicator (commercial, public, private or otherwise) using or supervising the use of a restricted use pesticide shall:

- A. Use any pesticide in a manner inconsistent with its labeling or with this Chapter.
- B. Use any restricted use pesticide without being certified or under the direct supervision of a certified applicator.
- C. Supervise the use of a restricted pesticide without first obtaining a Navajo Nation certification.
- D. Falsify any applications or records required by this Chapter.
- E. Fail to keep or refuse to allow inspection of any records required by this Chapter.
- F. Make available any restricted use pesticide to anyone who is not authorized to use it or is not acting directly under the supervision of one who is authorized to use it.

- G. Use or dispose of any pesticide or pesticide container in a manner which is inconsistent with the label directions or which unreasonably endangers or harms the quality of the natural environment or the health of any living beings.
- H. Violate any of the requirements of this Chapter or the regulations thereunder.

202. Pesticide Dealers.

No pesticide dealer shall:

- A. Distribute, sell, offer, or hold for sale any pesticide without being licensed by the Executive Director.
- B. Sell any restricted use pesticide not registered pursuant to FIFRA.
- C. Detach, alter, deface or destroy, in whole or in part, any label or labeling required by FIFRA.
- D. Add or delete any substance to or from a pesticide which may alter its registered composition.
- E. Sell or offer for sale any pesticide other than from the original unbroken package.
- F. Make false or misleading representation or advertisement for any pesticide or device, including any advertisement or representation which fails to reveal the consequences which may result from the use of the pesticide or device to which the advertisement or representation refers.
- G. Use any pesticide in a manner inconsistent with the label or this Chapter.
- H. Dispose of or store any pesticide in areas not approved for disposal and storage.
- I. Violate any of the requirements of this Chapter or the regulations thereunder.

203. Unregistered or Uncertified Use, Storage and Disposal of Containers.

No person shall:

- A. Distribute, sell, offer for sale, hold for sale, ship, or deliver for shipment to, or receive from, any person any pesticide that is not registered with the EPA under FIFRA or subject to the exceptions listed under FIFRA § 3(a) & (b).
- B. Produce any pesticide subject to FIFRA or any active ingredient used in producing a pesticide subject to FIFRA unless the establishment in which it is produced is registered with the EPA.
- C. Use restricted use pesticides unless certified pursuant to this Chapter. This prohibition however does not apply to persons who apply pesticides under the direct supervision of a certified applicator pursuant to this Chapter. In addition, any person may use a general use pesticide, provided it is used in accordance with its directions, warnings and cautions and only for the uses for which it is registered.
- D. Transport, store, or dispose of any pesticide or pesticide container in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife or beneficial insects, or to pollute any waterway in a manner harmful to any wildlife therein or the quality of the water in such waterway, or to otherwise adversely impact the quality of any other water resources, including groundwater, within the Navajo Nation.
- E. Violate any of the requirements of this Chapter or the regulations thereunder.

[SUB]CHAPTER 3. DEALERS AND SALES MANAGERS.

301. Licensing.

Any pesticide dealer in the Navajo Nation, shall obtain a license from the Executive Director, pursuant to the regulations promulgated under this Chapter.

302. Qualifications of sales manager.

Any person seeking to work as a sales manager for a pesticide dealer shall apply for qualification from the Executive Director pursuant to the regulations promulgated under this Chapter.

303. Responsibility.

Every licensed pesticide dealer shall be responsible for the acts of each person employed by him in the distribution, sale, solicitation, handling and storage of pesticides. The pesticide dealer's license or the qualification of the sales manager or both may be suspended or revoked, after a hearing, for any violation of this Chapter, whether committed by the pesticide dealer, the sales manager or by any other officer, agent, or employee of the sales outlet.

304. Records.

Pesticide dealers shall keep a record of each sale of restricted use pesticide at each sales outlet on forms provided by the Executive Director. All records and reports shall be submitted to the Executive Director as specified by the regulations promulgated pursuant to this Chapter.

305. License Conditions.

- A. As a condition of obtaining a dealer's license, or qualification of a sales manager, said applicants shall consent to the jurisdiction of the Navajo Nation and shall agree to abide by all laws of the Navajo Nation.
- B. All dealer license and qualification of sales manager application forms shall contain the consent to jurisdiction statement set forth at Section 405 of this chapter.

SUBCHAPTER 4. PESTICIDE APPLICATORS.

401. Recognition of EPA Classifications.

The Navajo Nation recognizes the classification of pesticides, whether for general use or restricted use, or both made by the Administrator of the EPA by the EPA pursuant to FIFRA. In addition, the Executive Director may restrict the use of additional pesticide products if the Executive Director finds that their uses must be restricted to prevent damage to property other than the property to which they are directly applied or to persons, animals, crops or vegetation other than the pests which they are intended to destroy.

402. Classification and Categorization of Pesticide Applicators.

The Executive Director will classify pesticide applicators as commercial applicators, public applicators or private applicators, according to the definitions in Section 103.A. of

this Chapter. In addition, commercial and public applicators shall be categorized in one or more of the categories defined below, based on the application site and the type of work they perform.

A. Categories

(1) Agricultural Pest control.

a. Plant

This category includes commercial and public applicators using or supervising the use of restricted use pesticides in the production of agricultural crops, including, but not limited to, feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts, and including use or supervision of use of restricted use pesticides on grasslands and non-crop agricultural lands.

b. Animal

This category includes commercial and public applicators using or supervising the use of restricted use pesticides on animals, including, but not limited to beef cattle, dairy cattle, swine, sheep, horses, goats, poultry and livestock, and including the use or supervision of the use of restricted use pesticides on places in which animals are confined. Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large-scale use of pesticides are included in this category.

(2) Forest Pest Control

This category includes commercial and public applicators utilizing or supervising the use of restricted use pesticides in forests, forest nurseries, and forest seed producing areas.

(3) Ornamental and Turf Pest Control

This category includes commercial and public applicators using or supervising the use of restricted use pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.

(4) Seed Treatment

This category includes commercial and public applicators using or supervising the use of restricted use pesticides on seeds.

(5) Aquatic Pest Control

This category includes commercial and public applicators using or supervising the use of any restricted use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health-related activities specified in category (8) below.

(6) Right of Way Pest Control

This category includes commercial and public applicators using or supervising the use of restricted use pesticides in the maintenance of public roads, electric powerlines, pipelines, railway rights-of-way or other similar areas.

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

This category includes commercial and public applicators using or supervising the use of restricted use pesticides in, on, or around food handling establishments, human dwellings, institutions, such as schools and hospitals, industrial establishments, including warehouses and grain elevators, and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products.

(8) Public Health Pest Control.

This category includes Tribal, State, Federal, or other governmental employees using or supervising the use of restricted use pesticides in public health programs for the management and control of pests having medical and public health importance.

(9) Regulatory Pest Control.

This category includes Tribal, State, Federal, or other governmental employees using or supervising the use of restricted use pesticides in the control of regulated pests.

(10) Research and Demonstration Pest Control.

This category includes:

- a. persons who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration, and
- b. persons conducting field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides.

(11) Rodent, Predator, and Bird Pest Control.

This category includes commercial and public applicators using or supervising the use of restricted use pesticides in the control of rodents, predators, or birds.

(12) Wood Preservative Control.

This category includes commercial and public applicators using or supervising the use of restricted use pesticides in wood preservative products containing Creosote, Pentachlorophenol (including its salts) and Inorganic Arsenicals.

B. Subcategories - Types of Pesticides

All commercial and public applicators are further placed into subcategories according to the types of pesticides they apply. These subcategories are:

- (1) Herbicides, desiccants, defoliants, and plant regulators.
- (2) Insecticides, attractants, and repellents.
- (3) Pesticides.
- (4) Rodenticides, predicides and avicides.
- (5) Fungicides and nematocides.
- (6) Disinfectants and germicides.

All applicators who apply pesticides via aircraft must comply with all applicable federal and tribal regulations.

403. Standards of Competency for Certification of Commercial and Public Applicators.

All commercial and public applicators shall demonstrate competency in the use and handling of pesticides, both with regard to general standards applicable to all users and to additional specific standards applicable to each category or subcategory in which the applicator is classified.

A. General standards for Commercial and Public applicators.

Commercial and public applicators must demonstrate knowledge of the following subjects in order to receive certification:

(1) Label & Labeling Comprehension.

- a. The general format and terminology of pesticide labels and labeling;
- b. the understanding of instructions, signal words, terms, symbols, and other information commonly appearing on pesticide labels;
- c. classification of the product, general or restricted; and
- d. necessity for use consistent with the label.

(2) Safety - Factors Including:

- a. Pesticide toxicity and hazard to man and common exposure routes;
- b. common types and causes of pesticide accidents;
- c. precautions necessary to guard against injury to applicators and other individuals in or near treated areas;
- d. need for and use of protective clothing and equipment.;
- e. symptoms of pesticide poisoning;
- f. first aid and other procedures to be followed in case of a pesticide accident; and
- g. proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from gaining access to pesticides and pesticide containers.

- (3) Environment - The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:
 - a. Weather and other climatic conditions;
 - b. types of terrain, soil or other substrate;
 - c. presence of fish, wildlife and other non-target organisms; and
 - d. drainage patterns.
- (4) Pests - Factors such as:
 - a. Common features of pest organisms and characteristics of damage needed for pest recognition;
 - b. recognition of relevant pests; and
 - c. pest development and biology as it may be relevant to problem identification and control.
- (5) Pesticides - Factors such as:
 - a. Types of pesticides;
 - b. types of formulations;
 - c. compatibility, synergism, persistence and animal and plant toxicity of the formulations;
 - d. hazards and residues associated with use;
 - e. factors which influence effectiveness or lead to such problems as resistance to pesticides; and
 - f. dilution procedures.
- (6) Equipment - factors including:
 - a. Types of equipment and advantages and limitations of each type; and
 - b. uses, maintenance and calibration of equipment.

- (7) Application Techniques
 - a. Techniques used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which techniques of application to use in a given situation;
 - b. relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
 - c. prevention of drift and pesticide loss into the environment.
- (8) Laws and Regulations - Applicable Federal and Tribal laws and regulations.

B. Category-Specific Standards.

In addition to the general standards, commercial and public applicators must demonstrate knowledge of the principles of pesticide use as they relate to the particular use category in which the applicator is involved. The following are the category-specific standards:

- (1) Agricultural Pest Control.
 - a. Plant.

Applicators must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such knowledge is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, non-target injury and community problems resulting from the use of restricted use pesticides in agricultural areas.
 - b. Animal.

Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such

factors, formulation and, application techniques, age of animals, stress and extent of treatment.

(2) Forest Pest Control.

Applicators shall demonstrate practical knowledge of the types of forests, forest nurseries, and seed production in the Navajo Nation and the pests involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use. Due to frequent proximity of human habitation to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets and other domestic animals.

(3) Ornamental and Turf Pest Control.

Applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitation to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other domestic animals.

(4) Seed Treatment.

Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seeds.

(5) Aquatic Pest Control.

Applicators shall demonstrate practical knowledge of the secondary effects that can be caused by improper application rates, incorrect formulations, and faulty application of restricted use pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.

(6) Right-of-way Pest Control.

Applicators shall demonstrate practical knowledge of a wide variety of environments since rights-of-way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides, the need for containment of these pesticides within the right-of-way area, and the impact of their application activities on the adjacent areas and communities.

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

Applicators shall demonstrate a practical knowledge of a wide variety of pests, including their life cycles, types of formulation appropriate for their control and methods of application that avoid contamination of food, damage and contamination of habitat and exposure of people and pets. Since human exposure, including exposure of babies, children, pregnant women and elderly people, is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category. Because health-related pest control may involve outdoor application, applicators must also demonstrate practical knowledge of environmental conditions particularly related to this activity.

(8) Public Health Pest Control.

Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a

basis for control strategy. These applicators shall have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal, and drainage.

(9) Regulatory Pest Control.

Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required in other areas of the country where emergency measures are invoked to control regulated pests, and where individual judgments must be made in new situations.

(10) Research and Demonstration Pest Control.

Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstrations, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Such persons should also demonstrate an understanding of pesticide-organism interaction and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all of the standards detailed in 40 C.F.R. Section 171.4(b). In addition, such persons shall meet the specific standards required for categories (1) through (7) of this section as may be applicable to their particular activity.

Persons conducting field research or method improvement work with restricted use pesticides will be expected to know the general standards detailed in Section 403.A. of this Chapter. In addition, they shall meet the specific standards required for categories (1) through (7) of Section 403.B. of this Chapter that are applicable to their particular activity, or alternatively, they shall meet the more inclusive requirements listed under "Demonstration."

(11) Rodent, Predator, and Bird Pest Control.

Applicators shall demonstrate practical knowledge of rodents, predators, and bird pests, as well as predator-prey relationships. They should possess practical knowledge of rodent, predator and bird habits and habitat, and the hazards associated with secondary poisoning of non-target species.

(12) Wood Preservative Control.

Applicators shall demonstrate practical knowledge of wood preservative products containing creosote, pentachlorophenol (including its salts) and inorganic arsenical. They shall possess knowledge of how wood is preserved when using an EPA-registered pesticide containing creosote, pentachlorophenol (including its salts) and inorganic arsenical to protect it from insect attack and decay. Also, knowledge should include applicator safety and environmental protection. Wood treated with creosote, pentachlorophenol (including its salts) and inorganic arsenic should only be used in areas where such protection is important.

C. Exemptions from Standards

The above standards do not apply to the following persons for purposes of this Chapter: (1) Persons conducting laboratory-type research involving restricted use pesticides; and (2) Doctors of Medicine and Doctors of Veterinary Medicine applying pesticides as drugs or medication during the course of their normal practice, other than Doctors of Veterinary Medicine included under category A(1)(b) of Section 402 of this Chapter.

D. Until such time as the Navajo Nation EPA has adopted its own plan and procedures for examination and testing of competency, any applicant who possesses a certificate from the state of Arizona, New Mexico, or Utah, granted pursuant to an approved State FIFRA plan, shall be deemed to have demonstrated the level of knowledge and competency necessary to receive a similar certificate from the Navajo Nation.

404. Standards of Competency for Certification of Private Applicators.

In order to receive certification, all private applicators must show that they possess a practical knowledge of the pest problems and pest control practices associated with their agricultural operations; proper storage, use, handling and disposal of the pesticides and containers; and their related legal responsibilities. This practical knowledge includes the ability to:

- (1) Recognize common pests to be controlled and prevent potential damages caused by them.
 - (2) Read and understand the label and labeling information - including the common name of the pesticide to be applied; pest(s) to be controlled; timing and methods of application; safety precautions; pre-harvest or re-entry restrictions; and any specific disposal procedures.
 - (3) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances, taking into account such factors as areas to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.
 - (4) Recognize local environmental situations that must be considered during application to avoid contamination.
 - (5) Recognize poisoning symptoms and know procedures to follow in case of a pesticide accident.
- A. Until such time as the Navajo Nation EPA has adopted its own procedures for examination and testing of competency, any applicant who possesses a certificate from the state of Arizona, New Mexico or Utah, granted pursuant to an approved state FIFRA plan, shall be deemed to have demonstrated the level of knowledge and competency necessary to receive a similar certificate from the Navajo Nation.

405. Certification and License Application Conditions.

- A. All certification and license applications shall contain the following statement to which the applicant must agree and subscribe for the application to be complete and as a condition precedent to the issuance of any certification or license:
- “Applicant hereby consents to the jurisdiction of the Navajo Nation in connection with all activities conducted pursuant to or in connection with any certification or license issued pursuant to this application or to which the provisions of the Navajo Nation Pesticide Act otherwise apply. This consent shall be effective whether or not a certification or license is issued or is in effect, and may not be withdrawn by Applicant. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents, including contractors and subcontractors, of Applicant.”
- B. Applicant shall include the foregoing statement as a term and condition of any agreement it executes for services to be performed or goods to be provided within the Navajo Nation in connection with any certification or license issued under this

chapter, and each party to any such agreement must agree and subscribe to said statement, substituting the name of the party for “Applicant” as appropriate, and substituting the phrase “this agreement” in place of the phrase “any certification or license issued pursuant to this application”. Failure by Applicant to include such statement, or of any party to agree and subscribe to such statement, shall render the contract or other agreement void and unenforceable, and shall subject Applicant to a civil penalty in accordance with Section 603 of this chapter.

406. Certification Procedures.

A. Commercial and Public Applicators.

(1) Certification Methods

A Navajo Nation certification may be obtained by presenting to the Executive Director a valid Commercial or Public applicator certification issued by the State of Arizona, New Mexico, or Utah pursuant to an approved State FIFRA plan. The Navajo certification issued will reflect Navajo Nation certification only in the commercial or public applicator categories appearing on the State certification. Further, the expiration date on the Navajo Nation certification shall not exceed the expiration date given on the State certification.

The Executive Director is authorized to develop and implement a Navajo commercial and public applicator examination and certification program, in conjunction with EPA, and in accordance with the standards required by this Chapter and FIFRA. Such program may be either an exclusive or non-exclusive alternative to the acceptance of State certification. A Navajo certification issued pursuant to such a program shall be valid for a period of three (3) years from the date of issuance. A reasonable fee, at a rate set by regulation, may be charged for the issuance of a Navajo Nation Certification, whether the certification is based on a state certification or on exam.

(2) Certification Renewal.

A Navajo certification may be renewed by presenting a valid Arizona, New Mexico, or Utah certification to the Executive Director, and shall be re-issued for a period not to exceed the expiration of such state certification, provided, if the Executive Director has promulgated a Navajo examination procedure for commercial and public applicators, such certifications may be renewed pursuant to the procedures specified therein.

(3) Records.

Commercial and public applicators shall keep and maintain records of each application of any restricted use pesticide within the Navajo Nation. Such records shall include the following information:

- a. Name and address of the person for whom the pesticide was applied;
- b. Location and size of treatment site, if different from (a);
- c. Year, month, day and time of application;
- d. Name of pesticide, identified by trade name and EPA registration number, formulation, concentration, rate applied, and total amount used;
- e. Purpose of application, including target pest(s), crop, commodity, or site, as applicable;
- f. Weather conditions; and
- g. Type and amount of pesticide disposed of, method of disposal, date, and location of disposal site.

Such records shall be kept for a period of 2 years from the date of application of the pesticide and shall be available for inspection by the Executive Director at reasonable times. The Executive Director shall, upon written request, be furnished a copy of such records by the commercial or public applicator. Records of restricted use pesticides application performed by persons under the direct supervision of a certified commercial or public applicator shall be the responsibility of the supervising certified applicator.

(4) Exemption.

The provisions of this section concerning records shall not apply to persons conducting research involving restricted use pesticides nor to Doctors of Medicine or Doctors of Veterinary Medicine applying restricted use pesticides as drugs or medication during the course of their normal practice, other than Doctors of Veterinary Medicine included under category A(1)(b) of Section 402 of this Chapter.

B. Private Applicators.

(1) Certification Methods.

A private applicator may obtain a Navajo Nation Certification by presenting to the Executive Director a valid Private Applicator's certification issued by the States of Arizona, New Mexico, or Utah pursuant to an approved State FIFRA plan. The Executive Director will issue a Navajo Nation certification to the holder of an Arizona, New Mexico, or Utah certification which shall authorize only those uses authorized by the State certification. The expiration date of the Navajo certification shall not exceed the expiration date given on the state certification.

The Executive Director is authorized to conduct or arrange for the conducting of training sessions for private applicators. Applicators who complete a thorough training in the use of one or more pesticides and demonstrate competency to use such pesticide(s), based on the private applicator standards set forth above, may be certified by the Executive Director to use such pesticide(s). The certification program may employ either a written or oral testing procedure or a thorough physical demonstration of proper technical knowledge and competency. This certification program may be either an exclusive or a non-exclusive alternative to the acceptance of state certification. A Navajo certification issued pursuant to such a program shall be valid for 3 years from the date of issuance.

A reasonable fee, at a rate set by regulation, may be charged for the issuance of a Navajo Nation certification.

(2) Certification Renewal

Recertification may be obtained by presenting an updated Arizona, New Mexico, or Utah certification to the Executive Director, but such renewal shall not exceed the period of the state certification, provided, if the Executive Director has promulgated a Navajo Certification Program, such certifications shall be renewed pursuant to the procedures specified therein.

C. Certification of Non-English Reading Applicators/Non-Readers

The Executive Director may certify a person who is unable to read English, if such person can demonstrate competency with regard to all of the standards required by this Chapter, except the ability to read. An applicator who does not read English or cannot for any other reason read the appropriate labels must:

- (1) Receive personal instruction from a certified applicator in the use of the pesticide.
- (2) Physically demonstrate that he understands how to use such pesticide.
- (3) Learn and memorize all of the significant information on the label.
- (4) Be able to distinguish by label shape, color, size or configuration the pesticide from others.
- (5) Be aware of sources of advice and information for safe and proper use of each pesticide related to his authorization.

Certification for non-readers is limited to one pesticide per certification.
Non-readers may not supervise non-certified applicators.

407. Standards for Supervision of Non-Certified Applicators by Certified Applicators.

Certified applicators (except non-readers) whose activities indicate a supervisory role must demonstrate a practical knowledge of Federal and Tribal supervisory requirements, including labeling, regarding the application of restricted use pesticides by non-certified applicators.

The availability of the certified applicator must be directly related to the hazard of the situation. In many situations, where the certified applicator is not required to be physically present, "direct supervision" shall include verifiable instruction to the competent person, as follows: (1) detailed guidance for applying the pesticide properly, and (2) provisions for contacting the certified applicator in the event that he/she is needed. In other situations, and as required by the label, the actual physical presence of a certified applicator may be required when application is made by a non-certified applicator.

Each certified applicator shall be responsible for the acts of each person employed, contracted, subcontracted, or supervised by him in the application of pesticides and all claims and recommendations for use of pesticides. The certified applicator shall be subject to criminal or civil penalties for any violation whether committed by him or by his officers, agents, employees or subcontractors. Reliance on a subcontractor shall not constitute a defense against any action brought by the Executive Director against a certified applicator pursuant to this Chapter.

408. Certification Requirements for Agricultural Aircraft Pilots.

All agricultural aircraft pilots must possess a valid agricultural aircraft pilot certification issued by the Executive Director, pursuant to regulations promulgated hereunder, and a valid commercial pilot's certification issued by the Federal Aviation Administrator.

SUBCHAPTER 5. STORAGE AND DISPOSAL OF PESTICIDES AND PESTICIDE CONTAINERS.

501. Pesticide Containers.

Storage and disposal methods shall comply with appropriate pesticide label instructions and regulations promulgated pursuant to this Chapter. All containers shall be flattened or pierced before disposal so that they cannot be used to contain any other materials or for any other purposes. Storage and disposal of pesticides shall only be at areas designated and approved by the Executive Director. Disposal of pesticide containers shall only be at approved or permitted landfills, in accordance with applicable solid waste laws and regulations.

SUBCHAPTER 6. ENFORCEMENT AND JUDICIAL REVIEW.

601. Entry and Inspection.

For purposes of carrying out this Chapter, the Executive Director may enter at reasonable times any establishment or other place where pesticides or devices are held for use, distribution or sale or where pesticides are being, or have been used, for the purposes of inspecting and obtaining samples of any pesticides or devices or samples of any containers or copies of labels. The Executive Director also may enter at reasonable times any establishment or site for the purpose of inspecting records required to be maintained pursuant to this Chapter or the regulations hereunder.

602. Denial, Suspension or Revocation of License or Certificate.

- A. The Executive Director may, for good cause shown or upon his own information and belief, informally contact any pesticide dealer or applicator about possible violations of this Chapter or practices which may result in violations. These informal contacts are to assist the dealer or applicator in adhering to practices which promote the proper use of pesticides.
- B. Upon recommendation to the Executive Director or based upon his own findings and belief, the Executive Director may issue a Warning of Possible Violation in the form of a letter to a dealer or an applicator. The letter shall explain the basis

for the Warning, possible measures which the dealer or the applicator may take to mitigate the basis of the warning, and an explanation of the steps that may be taken if the dealer or the applicator does not take positive corrective action. Neither this letter nor an informal contact are a necessary prerequisite to any further administrative or judicial action, except that the issuance of a warning of possible violation is a prerequisite to any criminal action against a private applicator.

- C. The Executive Director is authorized to issue, to any person who has willfully or negligently failed to comply with the recommendations of a Warning of Possible Violation or otherwise failed to comply with the requirements of this Chapter or the terms of a license or certification, an order to show cause why a license or certification should not be revoked. Such an order will require the person to appear before the Executive Director, or other body designated by the Executive Director.
- D. The Executive Director is authorized to suspend immediately or deny an application for a license or certification of any dealer or applicator whose actions or omissions in violation of this Chapter pose a significant threat to the health or welfare of the Navajo Nation, its people and its resources. Within 30 days of any such action, the Executive Director must insure that the dealer or applicator is given an opportunity for a hearing before the Executive Director or a body the Executive Director may designate for consideration of the suspension action and consideration as to whether the license or certification must be revoked, denied or suspended pending further investigation.

603. Penalties.

- A. Criminal Penalties
 - (1) Any person who commits one or more violations of the provisions of this Chapter shall be subject to criminal prosecution in the District Courts of the Navajo Nation. Upon receipt of the Executive Director's sworn statement alleging one or more violations of this Chapter, the Office of the Prosecutor of the Navajo Nation shall investigate and prosecute as appropriate alleged criminal violations of this Chapter.
 - (2) Any person who knowingly violates any provision of this Chapter or the regulations promulgated thereunder, or who knowingly makes any material false statement or omits material information from, or alters, conceals, or fails to file or maintain any record, application or other document required pursuant to this Chapter to be filed or maintained shall, upon conviction, be subject to a criminal fine of not greater than \$5000.00, except that in the case of a private applicator the maximum fine shall be

\$1000, and/or imprisonment for a period not to exceed thirty days.

- (3) In any instance where the Navajo Nation lacks jurisdiction over the person charged, the Executive Director may refer the action to the appropriate EPA Regional Administrator. Any person who is not subject to the criminal jurisdiction of the Navajo Nation also may be subject to exclusion from the territory of the Navajo Nation for consistent violations of the provisions of this Chapter or the regulations promulgated thereunder. Exclusion proceedings may be initiated by the Director in the District Courts of the Navajo Nation upon his/her determination that such violations have occurred.
- (4) In addition to the above proceedings, the Director in District Courts is authorized to initiate a proceeding, separately or in connection with either a criminal or exclusion proceeding brought under this Chapter, for any damages caused to the lands or other resources of the Navajo Nation as the result of any violation of this Chapter or the regulations promulgated thereunder, for any expenses incurred in investigating and evaluating such damages or violations, for any administrative costs incurred, and for the reasonable value of any attorney time or expenses associated with such proceeding.

B. Civil Administrative Penalties

- (1) Any person who violates any provision of this Chapter or the regulations promulgated thereunder may be assessed a civil administrative penalty by order of the Executive Director of not more than \$5,000 for each violation; provided, however, that no civil penalty shall be assessed unless the person cited shall have been given notice and opportunity for a hearing on such violation. The person cited shall have 30 days from receipt of such notice to pay the penalty or request a hearing. If a timely request for a hearing is not made, the penalty shall be final and the opportunity for judicial review shall be waived.
- (2) In the event that the Executive Director is unable to collect the civil penalty, the Executive Director shall refer the matter to the Attorney General of the Navajo Nation for recovery of such amount in the appropriate District Court of the Navajo Nation. In addition, the Attorney General is authorized to recover of the Director's enforcement all enforcement expenses, including, but not limited to attorneys' fees and the cost of collection proceedings.
- (3) In determining the amount of the penalty, the Executive Director shall consider the appropriateness of such penalty to the size of the business of

the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. Whenever the Executive Director finds that the violation occurred despite the exercise of due care or did not cause significant harm to health or the environment, the Executive Director may issue a warning in lieu of assessing a penalty.

C. Stop Sale, Use, Removal and Seizure.

(1) Stop Sale, Use or Removal Orders

In addition to any other penalties or actions available under this Chapter, the Executive Director may issue and enforce a written or printed "stop sale, use or removal" order to the pesticide dealer for any lot of pesticides or devices which the Executive Director has reasonable cause to believe are being sold or offered for sale in violation of any of the provisions of this Chapter or regulations promulgated pursuant to this Chapter. Such order shall remain in effect until the Executive Director has determined that the provisions of this Chapter or regulations in questions have been complied with.

(2) Seizure

If the Executive Director has reasonable cause to believe that a pesticide dealer is selling or offering for sale any pesticides or devices in violation of a "stop sale, use or removal order", the Executive Director may seize the pesticides or devices subject to such order and hold them at a designated place until the violation of this Chapter or its regulations has been complied with or until the violation has been otherwise legally disposed of and the dealer has paid all costs incurred in connection with the seizure. Such seizure shall be conducted in accordance with the applicable laws of the Navajo Nation.

D. Injunctive Relief

If the violation of any of the provisions of this Chapter or of any regulations promulgated thereunder is a nuisance or a hazard to the health and safety of humans or harmful to the environment, such activity may be restrained or enjoined at any time by an order issued by the appropriate District Court of the Navajo Nation, but only if all administrative remedies have been exhausted or if the Executive Director determines that immediate and irreparable injury, loss, or damage will result if such violation or activity is not immediately restrained or enjoined. The Executive Director shall request the Attorney General of the Navajo Nation to bring an action to obtain an order to restrain or enjoin any such violation.

604. Judicial Review.

A. Review in Navajo Nation District Court

Whenever the Executive Director takes final action without the opportunity for a hearing, such as in the case of a refusal to change a pesticide classification, review of such final action shall be had in the appropriate Navajo Nation District Court in Window Rock. In addition, any person subject to an administrative penalty under Section 603.B may seek review of such penalty assessment in the Navajo Nation District Court in Window Rock by filing a petition for review in such court within 30 days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Executive Director and the Attorney General. Within 30 days thereafter the Executive Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this section unless the record, taken as a whole does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Executive Director may seek to recover civil penalties ordered or assessed under this section.

B. Review in Navajo Nation Supreme Court

Review of all other final actions of the Executive Director, including but not limited to promulgation of regulations, issuance of orders, including civil penalty orders, and denial, suspension or revocation of certificates and licenses, shall be had in the Navajo Nation Supreme Court. A petition for review shall be filed within 60 days from the date that notice of such final action is first published, or, if notice is not published, first served upon the alleged violator or person required to be served, except that if the petition is based solely on grounds arising after the sixtieth day, then the petition shall be filed within 60 days after such grounds arise. The Navajo Nation Supreme Court, in reviewing the final action, shall limit its review to the issues and evidence that were before the Executive Director at the time of the final action from which the appeal is taken.

C. Limitations on Review

If judicial review of a final action of the Executive Director could have been obtained under subsection A. or B. of this section, that action shall not be subject to judicial review in judicial proceedings for enforcement.

D. Standards for review

In reviewing any final action of the Executive Director undertaken pursuant to this Chapter, the court may reverse any such action that it finds to be:

- (1) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;
- (2) contrary to constitutional right, power, privilege or immunity.
- (3) in excess of statutory jurisdiction, authority, or limitations or short of statutory right;
- (4) without observance of procedure required by law, such failure to observe such procedure is arbitrary or capricious; or
- (5) unsupported by substantial evidence.

E. Any challenge to the lawfulness of any provision of this chapter must be filed in accordance with Navajo law within ninety (90) days after the date of enactment of this chapter in the District Court for the District of Window Rock, naming as defendant the Navajo Nation, and not thereafter or in any other manner. In any such action, relief shall be limited to declaratory relief. The District Court for the District of Window Rock shall have exclusive jurisdiction and venue over any action challenging any provision of this chapter.

SUBCHAPTER 7. MISCELLANEOUS.

701. Use of Funds.

Monies derived from fees and penalties under this Chapter and regulations promulgated thereunder shall be available to the Executive Director to administer this Chapter and regulations. Such funds shall be deposited into a duly established revolving account and expended in accordance with the revolving account plan of operation approved budget. Any monies contained in said revolving account at the end of any fiscal Year shall not revert to the general fund and shall remain available for appropriation as provided in this section.

702. Cooperative Agreements.

The Executive Director is authorized to pursue the development of cooperative agreements, including with grants in-aid, from any agency of the State of Arizona, New Mexico, or Utah, the Bureau of Indian Affairs, or the United States Environmental Protection Agency for the purpose of carrying out the provisions of this Chapter. Any such agreement is subject to approval in accordance with the laws and procedures of the

Navajo Nation.