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SUBCHAPTER 8. PRIVATE PESTICIDE APPLICATORS

7:30-8.1 General requirements

(a) No private pesticide applicator shall engage in, cause, suffer, allow, or permit the use or application of, or supervise the use or application of, any pesticide without first meeting the requirements of certification and licensing as a private pesticide applicator unless:

1. Such person is applying pesticides under the direct supervision of a certified and licensed private pesticide applicator pursuant to N.J.A.C. 7:30-12.12;
 - i. For the purposes of this subchapter, a person is under direct supervision only if the person supervised and the person supervising are employed by the same business or agricultural establishment at the same physical location.
 - ii. "Employed at the same physical location" means that the person supervising and the person supervised shall both have physical work spaces at the same physical location. In addition, all records of pesticide application performed by the person supervised shall be kept at the same physical location as the person supervising and shall be immediately available upon request by the Department pursuant to N.J.A.C. 7:30-8.8;
2. Such person is a commercial pesticide applicator certified and licensed in a commercial category or subcategory which completely covers the subject matter content in the private pesticide applicator certification requirements;
3. Such person is using general use pesticides on property owned or rented by that person to produce an agricultural commodity or commodities worth less than \$2,500 annually;
4. Such person is using any "minimum risk" pesticide exempted from regulation by N.J.A.C. 7:30-2.1(m)5;
5. Such person has experience in using pesticides for the purpose of producing an agricultural commodity and is only using general use pesticides for such purpose. This exemption shall expire on November 19, 2003, after which all private pesticide applicators shall be subject to the certification and licensing requirements of (a) above.

7:30-8.2 Certification

(a) In order to become certified, an applicant shall pass an examination **administered by the Department or a third party approved by the Department. The examination shall include** core subject matter as well as specific category subject matter. The examinations may be written, and when deemed necessary by the Department, may include performance testing, and shall include but not be limited to all areas of required knowledge set forth in Federal regulations 40 CFR 171. The core subject matter shall include such areas as pesticide safety and handling, current laws and regulations, understanding of label and labeling information, including the name of the pesticide, the crop, animal or site to which it will be applied, pest(s) to be controlled, when and how to apply, harvest intervals, related environmental hazards, poisoning symptoms and disposal techniques. The specific category subject matter shall include areas of required knowledge **that** are specific to the type of pesticide use performed by the applicator.

1. **The third party may charge a fee for administering an examination.**

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2. The Department will charge \$100.00 for each examination that it administers.

(b) Any person who is assigned a certification examination date, and fails to be present on that examination date without just cause, shall be subject to a \$50.00 fee.

(c) Application for examination shall be made on a form approved by the Department. The application shall be submitted to the exam provider no later than midnight of the closing date for the examination, as determined by the examination provider.

1. The application form is available from the Bureau of Licensing and Registrations website at <http://www.nj.gov/dep/enforcement/pcp/bpo.htm>.

(d) Any examination, form, or required training course or material used by a third party shall be approved by the Department. Any such materials developed under an agreement with the Department shall be considered Department-approved.

7:30-8.3 Licensing

(a) Within 12 months after a person has become fully certified and eligible to become licensed as a private pesticide applicator, the certified private pesticide applicator shall complete and file with the Department, on forms provided by the Department, a license application. Any certified pesticide applicator who fails to file for a license within the 12 month period will lose certification status and shall again become certified in accordance with the provisions of this subchapter.

(b) Applications for new licenses will be accepted from certified private pesticide applicators throughout the calendar year. All such licenses will expire on October 31, of the fifth license year following the date of application.

(c) The certification and license of a private pesticide applicator are not transferable.

(d) A private pesticide applicator shall notify the Department, in writing and within thirty (30) days, if any information shown on his or her license application changes.

(e) No person shall be eligible for a license as a private pesticide applicator until reaching 18 years of age.

7:30-8.4 License renewal

(a) A certified private pesticide applicator shall renew his or her license on a form supplied by the Department.

(b) A previously certified and licensed private pesticide applicator who has not been licensed with the Department for two (2) consecutive years after the expiration date of his registration shall lose certification status and shall again become certified and licensed in accordance with the provisions of this subchapter.

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7:30-8.5 Continuing certification

(a) In order to maintain his or her certification, the private pesticide applicator shall meet the requirements for continuing certification as specified by the Department. If the requirements for continuing certification are not met, the private pesticide applicator shall again become certified in accordance with the provisions of this subchapter.

(b) Persons licensed as private pesticide applicators who are held to be responsible for a pesticide misuse under the provisions of the Act or regulations promulgated thereunder, may be required by the Department to provide evidence of continued competency to apply or supervise the application of pesticides by repeating the certification requirements of N.J.A.C. 7:30-8.2.

(c) Provisions of (b) above shall be directed to the responsible private applicator for pesticide misuse by himself or herself and/or for pesticide misuse by private applicators or handlers under his or her direct supervision.

(d) Any private pesticide applicator required under (b) above to become recertified shall be so notified by the Department and shall have a maximum of 30 days from the date of such notice to comply.

(e) Failure to comply will result in the private pesticide applicator license being immediately suspended pending the outcome of an expedited hearing which shall be granted the applicator upon request under the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1.

7:39-8.6 Special licenses

The Department may issue special permits or limited private pesticide applicator licenses in cases that warrant deviations from the certification requirements of this subchapter. Specialized training and examinations that assure the Department that competency and other necessary requirements are met may be the basis for issuance of special licenses.

7:30-8.7 Right of entry or collection of samples

(a) In order to determine compliance with the requirements of the Act or rules promulgated thereunder, the Department may, at reasonable hours enter any building or place except private residences pursuant to (c) below, for the purpose of investigating an actual or suspected violation relating to pesticides, ascertaining compliance or non-compliance with any rules, regulations or orders of the Department. The Department may conduct an inspection or sampling, and may procure samples for analysis or examination from any lot, package or parcel of pesticide or substance suspected to contain a pesticide. If the owner, operator or agent in charge of the place to be inspected is present, officers or employees of the Department shall notify him or her of their intent to inspect or sample and inform him or her of the reason therefore. Having been so notified, no person shall prevent officers or employees of the Department from conducting such inspection or sampling.

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(b) Notification pursuant to (a) above may also consist of a "Notice Of Attempt To Contact" delivered by hand to an employee, an owner, operator or agent in charge, or sent by certified mail, receipt acknowledged.

1. When such "Notice" has been sent by certified mail, the owner, operator or agent in charge of the place to be inspected shall have one week after the date of delivery to contact the Department, Pesticide Control Program and arrange for the inspection or sampling.

(c) Those portions of a private residence used for business purposes shall be accessible for inspection and sampling. These portions include, but are not limited to, the office and record keeping areas, storage areas, mixing/loading sites, and vehicle parking areas.

(d) Compliance with this section shall be a condition of licensing for any out-of-State licensee.

7:30-8.8 Records

(a) Any person required to be licensed as a private pesticide applicator shall keep, for each application of a pesticide made by him or her or under his or her direct supervision, a record of application containing the following information unless the application is of aquatic pesticide, in which case a record shall be kept in accordance with N.J.A.C. 7:30-9.3(j):

1. The date of application;
 - i. For pesticides having a specific restricted entry interval (REI) on the label or labeling, the date of application shall include the hour completed (which signals the beginning of the REI); and
 - ii. The re-entry time and date;
2. The place of application;
 - i. For pesticide applications to an agricultural commodity, place of application shall include:
 - (1) The name and address of the farm;
 - (2) The specific field, greenhouse or land area, including the municipality and county;
 - (3) The crop, commodity or stored product that was treated with the pesticide; and
 - (4) The size of the area treated;
 3. The brand or trade name, the active ingredients, and the EPA registration numbers of each pesticide used or symbol representing such information, providing the business also keeps a list which clearly correlates the symbol used pursuant to (b)1 below;
 4. The "recipe" used to mix the pesticide mixture, as required by the label. The recipe shall consist of:
 - i. The total amount of pesticide concentrate; and
 - ii. The total amount of diluent.
 5. The total amount of mixture used for each individual application; and
 6. The full name and pesticide applicator license number of the person making the application; or the full name of the handler; or a symbol **that** corresponds to that

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person's name on a separate list of all private applicators and/or handlers.

(b) In addition to the records required by (a) above, the applicator shall also keep, in writing:

1. A listing of the names, active ingredients (common chemical name, if available) and corresponding EPA Registration Numbers of all the pesticides applied by him or her. This information may be kept separately from the records required by (a) above, only if a code is used on each application record which corresponds to a pesticide on the list or the information may be integrated with such records by including on the record of each pesticide application the full name, active ingredients and EPA Registration Number of each pesticide used; and
2. A listing of the handler(s) working under the private applicator's direct supervision.

(c) All records and information required to be kept pursuant to this section shall be recorded in writing as soon as possible, but no later than 24 hours after application and kept for a minimum of three years.

(d) All records and information required to be kept pursuant to this section shall be immediately provided to the Department upon request. Such records shall also be immediately provided to medical personnel in emergency cases. In non-emergency cases, medical personnel may request this information through the Department.

(e) Before the application of any pesticide on or in an agricultural establishment, every agricultural employer, agricultural owner or agricultural lessee is entitled to the following information from any handler employer, commercial pesticide applicator and/or pesticide applicator business performing any application of a pesticide having a restricted entry interval (REI) subject to the provisions of N.J.A.C. 7:30-12:

1. The specific location and description of the areas **to be treated**;
2. The **start and estimated end** time and date of application;
3. The product name, EPA registration number, and active ingredient(s);
4. The restricted-entry interval **specified on the pesticide labeling**;
5. Whether posting and oral notification, **or both**, are required; and
6. Any **restrictions or use directions** on the **pesticide labeling that are to be followed in order to protect workers, handlers**, or other persons during or after application.

(f) The records of application for all pesticides used under a State or Federal Experimental Use Permit, FIFRA Section 18 Emergency Exemption or Section 24(c), Special Local Needs registration shall be clearly designated so that they stand out from the other application records. In addition, such records shall contain, in addition to the information required in (a) above, the EPA Section 24(c) SLN Product Registration Number, EPA Section 18 File Symbol Number, or the EPA EUP Number.

7:30-8.9 Purchase of restricted use pesticides

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No person shall purchase a restricted use pesticide unless he or she presents his or her valid certified pesticide applicator license pursuant to this subchapter.

7:30-8.10 Assignment of work

No person shall require any individual to make a pesticide application in any category or subcategory in which the individual has not been certified and licensed as an applicator pursuant to this subchapter or trained and recognized as a handler pursuant to N.J.A.C. 7:30-12, unless the individual so assigned is applying pesticides by equipment other than aerial and is working under the supervision of a responsible pesticide applicator, certified and licensed pursuant to this subchapter, who is employed by the same business and is physically present at the time, site and place of application.

7:30-8.11 Denial, suspension, or revocation of private pesticide applicator license

- (a) The Department, when it determines that grounds exist, may:
 - 1. Deny an application for a private pesticide applicator license;
 - 2. Suspend a private pesticide applicator license;
 - 3. Revoke a private pesticide applicator license.

- (b) Each of the following acts shall constitute a ground for which any of the disciplinary actions described in (a) above may be taken:
 - 1. Refusing or, after notice, failing to comply with the provisions of the Act or this Chapter or any Order issued by the Department pursuant thereto;
 - 2. Operating in such a manner so as to cause harm, injury or damage to persons, property or the environment, or a significant risk of harm, injury or damage;
 - 3. Making false or fraudulent claims through any form of written or verbal communication misrepresenting the degree of certification needed, or the effect of any pesticide or application methods to be utilized;
 - 4. Making a pesticide application which is not in accordance with the pesticide label, except as allowed by the EPA, or not in accordance with administrative actions on specific pesticide(s) taken by the EPA, or not in accordance with the specifications of a special local need registration or not in accordance with use restrictions imposed by the Department under the authority of N.J.A.C. 7:30-10.1(a);
 - 5. Operating faulty or unsafe pesticide application equipment;
 - 6. Applying any pesticide to an agricultural crop where any person other than those engaged in the application is present within the boundaries of the target site at the time of application;
 - 7. Failing to comply with restricted entry interval (REI) requirements as provided in N.J.A.C. 7:30-12, or the product label and any days to harvest interval as stated on a pesticide label;
 - 8. Failing to keep or falsification of required records;
 - 9. Falsifying or making misleading statements in the license application for a private pesticide applicator;
 - 10. Evading or attempting to evade the provisions of the Act or this chapter or aiding,

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abetting, combining with, or conspiring with any person for any purpose which will evade or be in violation of the provisions of the Act or this chapter including, but not limited to, using another persons' certification or license; or

11. Receiving disciplinary action for committing any of the acts in (b) 1 through 10 above in another state, territory or tribal jurisdiction.

(c) In the event of the issuance of a final order assessing a civil penalty under section 14(a) (7 U.S.C. § 136(l)) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §§ 135 et seq.) or a criminal conviction under section 14(b) (7 U.S.C. § 136(l)), the Department will review and may suspend or revoke the license of any person so assessed or convicted.

(d) No person having a private pesticide applicator license which has been denied, revoked or suspended in this State or in any other state, territory or tribal jurisdiction, shall be allowed to apply pesticides under the direct supervision of any licensed pesticide applicator during the time period in which the revocation or suspension is in effect.

(e) Where the Department acts pursuant to (a) above, the Department shall afford a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1, to any person who is aggrieved by the order and who has applied to the Department for a hearing within 20 days of issuance of the order.

7:30-8.12 Reciprocity

(a) The **examination provider** may waive initial certification testing where an applicant has previously been certified in another state or territory pursuant to a valid certification test given in that state or territory of the United States, provided that the Commissioner, by cooperative agreement, has previously recognized such state or territory as having adopted a certification program substantially equivalent to New Jersey's.

(b) A New Jersey pesticide applicator license will be issued pursuant to this section, if the following conditions are satisfied:

1. The **examination provider** receives proof of a valid certification from any state or territory **that** has been officially recognized by the State of New Jersey as having a certification program substantially equivalent to New Jersey's and which has signed a cooperative agreement with the State of New Jersey relating to the certification of pesticide applicators and the reciprocal acceptance thereof;
2. The registrant demonstrates **to the examination provider**, through testing, a knowledge of relevant New Jersey Pesticide Control laws and regulations;
3. **All applicable fees are paid. The examination provider shall charge the applicable fee for an examination, notwithstanding that it has waived all or a portion of the initial certification testing in accordance with (a) above; and**
4. The applicant has no violation history in his or her state of residence.

7:30-8.13 Responsibility for the action of employees

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Notwithstanding the responsibility of any other person or the exemption from the provisions of any other section of this subchapter, each employer shall be held responsible for any violation of the act committed by his or her employee in the scope of his or her employment. This responsibility shall be joint and several.

7:30-8.14 Container and Containment Rule

No person shall hold, use, distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State or between points within this State through any point outside this State any pesticide or pesticide container, unless he or she complies with the requirements of 40 C.F.R. Parts 9, 156 and 165 (otherwise known as the Federal Container and Containment Regulations).