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## **SUBCHAPTER 5. COMMERCIAL PESTICIDE OPERATORS**

### **7:30-5.1 General requirements**

(a) No commercial pesticide operator shall engage in, cause, suffer, allow, or permit the use or application of any pesticide without first meeting the training and licensing requirements of this subchapter unless:

1. Such person is certified and licensed as a commercial pesticide applicator;
2. Such person is at least 18 years of age and working under the direct supervision of a responsible commercial pesticide applicator who is present at the time and place of application and visual and audio contact sufficient to ensure proper application is maintained.
  - 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 employer.
  - ii. Commercial pesticide operators who work for a pesticide applicator business are considered under direct supervision only if the person supervised and the person supervising are employed at the same physical location. "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. 7:30-6.8 or 7.3; Records kept at a temporary seasonal facility during the spray season, may be transferred to the main facility at the end of the spray season.
3. Such person is applying any "minimum risk" pesticide which has been exempted from regulation by the US EPA under 40 CFR Part 152; or
4. Such person is exempt under the provisions of N.J.S.A. 13:1F-1a, namely local or county health inspectors who use only general use pesticides as flushing agents, such as pyrethrum sprays, to check for insect infestations during the normal course of their job.

(b) Notwithstanding the responsibility of any other person or the exemption from the provisions of any other section of this subchapter, any commercial pesticide operator may be jointly and severally responsible for any aspects of any pesticide application in which he or she is involved.

(c) Persons exempt under this section from all licensing requirements shall not be considered to be commercial pesticide operators.

(d) No commercial pesticide operator shall supervise the use or application of any pesticide.

(e) No commercial pesticide operator shall perform an aerial application of any pesticide.

### **7:30-5.2 Training**

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(a) In order to meet the requirements for training, a commercial pesticide operator who has never before been licensed as an operator or who has lost his or her license pursuant to N.J.A.C. 7:30-5.4(b) shall:

1. Complete a Department approved commercial pesticide operator training course.
  - i. The Department approved commercial pesticide operator training course shall provide the commercial pesticide operator with a working knowledge of, at a minimum, the following information:
    - (1) The proper use of the application equipment;
    - (2) The hazards that may be involved in applying the pesticides;
    - (3) Instruction for mixing pesticides to be used in particular circumstances;
    - (4) Protective clothing and safety equipment required during the handling and application of pesticides;
    - (5) General precautions to be followed in the disposal of containers as well as the cleaning and decontamination of the equipment which the commercial pesticide operator proposes to use;
    - (6) Applicable State and Federal pesticide laws and regulations;
    - (7) An understanding of how to correctly interpret pesticide label and labeling information; and
    - (8) An understanding of the principles of integrated pest management (IPM); and
2. Complete a minimum of 40 hours of "on-the-job" practical training sufficient to allow the commercial pesticide operator to competently perform the functions associated with any applications in which the commercial pesticide operator is expected to be involved.
  - i. The commercial pesticide operator in training shall witness or perform at least the minimum number of pesticide applications during the 40 hours of "on-the-job" training in each of the following categories of work for which they are trained:

<u>Category of Work</u>	<u>Minimum Number of Applications</u>
Category 1A - Plant:	5
Category 1B - Animals:	2
Category 2 - Forest pest control:	2
Category 3A - Ornamental:	15
Category 3B - Turf:	15
Category 3C - Interior landscaping	15
Category 4 - Seed treatment:	2
Category 5 - Aquatic pest control:	5
Category 6A - General vegetation management:	10
Category 6B - Right of Way:	5
Category 7A - General and household pest control:	15
Category 7D - Food manufacturing and processing:	5
Category 7E - Wood preserving pest control:	2
Category 7F - Antifoulants:	2
Category 8A - General Public Health:	15
Category 8B - Mosquito control:	5
Category 8C - Campground pest control:	5

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Category 8D - Cooling water pest control:	2
Category 8E - Sewer Root Control:	2
Category 8F - Pet grooming:	15
Category 9 - Regulatory pest control:	5
Category 12A - Water Sanitization:	10
Category 12B - Sterilization:	15

- ii. Proof of such applications shall consist of the records of application signed by both a licensed pesticide applicator and the commercial pesticide operator in training, or any other Department approved record. Such records shall be kept for a minimum of three years and shall be immediately available upon request by the Department.
- iii. A responsible pesticide applicator must be present during any part of the "on-the-job" training which requires the commercial pesticide operator in training to apply pesticides.

(b) As an alternative to the minimum of 40 hours of "on-the-job" training required in (a)2 above, the commercial pesticide operator in training may witness or perform demonstrations of the types of pesticide applications which the commercial pesticide operator shall perform in the future.

1. Such demonstrations shall be equivalent to the "on-the-job" training except that no actual pesticide is used in the demonstration.

(c) Any required training course or materials developed under an agreement with the Department shall be considered Department-approved.

### **7:30-5.3 Licensing**

(a) When the commercial pesticide operator has satisfied the training requirements pursuant to N.J.A.C. 7:30-5.2(a) and is eligible for the commercial pesticide operator's license, the commercial pesticide operator shall file with the Department, on forms provided by the Department, a license application. The application shall be co-signed by a certified and licensed responsible pesticide applicator and shall indicate that the co-signer shall be the responsible pesticide applicator for pesticide applications performed by the commercial pesticide operator. A license fee of \$30.00 shall be included as an integral part of the commercial pesticide operator license application.

1. The commercial pesticide operator shall have 30 days after the post mark date of the license application in which to operate before he or she must be licensed.
2. License application forms may be obtained by contacting the Pesticide Control Program, P.O. Box 411, Trenton, NJ 08625-0411.

(b) The license shall expire on October 31 of each license year.

(c) Applications for new licenses will be accepted from commercial pesticide operators throughout the calendar year but a full term's license fee will be required. All such licenses will expire on October 31 following the date of application, except that the Department

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may issue a license for an additional year when an application is initially filed during the last three months of the license year.

(d) The license shall cease to be valid if the holder thereof or the co-signer of the application on which it was based terminates the supervisory relationship as defined in this chapter by the term "under direct supervision."

1. Any commercial pesticide operator whose license has become void pursuant to this subsection shall be allowed to apply pesticides in accordance with his or her current license for a period of 30 calendar days from the date of cessation of the supervisory relationship of the co-signer if the commercial pesticide operator is applying pesticides under the direct supervision of a certified and licensed responsible pesticide applicator.
- i. Any commercial pesticide operator whose license has become void as a result of a change in his or her responsible pesticide applicator, but who has continued to work for the same employer, shall obtain a signed statement from the new responsible pesticide applicator that the commercial pesticide operator is now applying pesticides under the direct supervision of the new pesticide applicator. This statement shall be sent to the Department, Pesticide Control Program.
- ii. In the circumstance where a responsible pesticide applicator is temporarily unavailable if and when needed, such as when sick or on vacation, etc., the commercial pesticide operator shall be allowed to apply pesticides in accordance with his current license for a period of 30 days only if the commercial pesticide operator is applying pesticides under the direct supervision of another certified and licensed pesticide applicator, working for the same employer. This is allowable, even if the supervising applicator is not employed at the same physical location as the commercial pesticide operator.
2. Any commercial pesticide operator, whose license has become void due to a change in employer, shall apply for a new commercial pesticide operator's license.
- i. The Department shall require an additional 40 hours of "on the job" training pursuant to N.J.A.C. 7:30-5.2(a)2.
- ii. The Department approved commercial pesticide operator training course shall not have to be retaken.

(e) The license of a commercial pesticide operator is not transferable.

(f) The commercial pesticide operator shall notify the Department, Pesticide Control Program, in writing and within 30 days, of any changes in the information contained on the license application.

(g) The co-signer of the application for the commercial pesticide operator license shall notify the Department, Pesticide Control Program, in writing and within 30 days, of any changes in the information contained on the commercial pesticide operator license application if such notification has not already been given to the Department by the commercial pesticide operator.

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(h) The commercial pesticide operator shall maintain his or her license on his or her person whenever pesticides are transported or a pesticide application is performed.

(i) No person shall be eligible for licensing as a commercial pesticide operator until reaching 18 years of age.

#### **7:30-5.4 License renewal**

(a) A commercial pesticide operator shall renew the commercial pesticide operator license annually on a form provided by the Department, Pesticide Control Program and, pay the license renewal fee of \$30.00.

(b) If a commercial pesticide operator fails to become licensed for two consecutive license periods, the commercial pesticide operator shall lose eligibility for commercial pesticide operator licensing and shall reapply to become a commercial pesticide operator pursuant to the provisions of N.J.A.C. 7:30-5.2 and 5.3.

#### **7:30-5.5 Records**

The records of each application of pesticides made by a commercial pesticide operator shall be kept by the co-signer of the commercial pesticide operator's license application in the manner delineated in N.J.A.C. 7:30-6.8 or by the pesticide applicator business which employs the commercial pesticide operator in the manner delineated in N.J.A.C. 7:30-7.3.

#### **7:30-5.6 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 premises, 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.

(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, an 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.

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(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 N.J.A.C. 7:30-5.6 shall be a condition of licensing for any out-of-State licensee.

**7:30-5.7 Denial, suspension, or revocation of commercial pesticide operator license**

- (a) The Department, when it determines that grounds exist, may:
1. Deny a license application for a commercial pesticide operator;
  2. Revoke a commercial pesticide operator license;
  3. Suspend a commercial pesticide operator 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 effect of any pesticide or application methods to be utilized, or the degree of certification needed;
  4. Making a pesticide application 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 7:30-10.1(a);
  5. 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;
  6. Falsifying or making misleading statements in the application for a commercial pesticide operator license;
  7. Evading or attempting to evade the provisions of the Act or this chapter, or aiding, 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;
  8. Using another person's certification or license with or without the other person's knowledge.
- (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 commercial pesticide operator license which has been revoked or suspended shall be allowed to become licensed as a commercial pesticide applicator

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or to apply pesticides under the direct supervision and in the line-of-sight of a licensed pesticide applicator who is physically present at the application location, during the time period in which the revocation or suspension is in effect.

1. If the license of a commercial pesticide operator is suspended, revoked, or is otherwise invalidated, the license shall be returned to the Department, Pesticide Control Program within 14 days of such revocation or suspension.

(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.

**7:30-5.8 Requirement for commercial pesticide operator certification and licensing as pesticide applicators**

(a) Any person licensed or required to be licensed as a commercial pesticide operator working under the direct supervision of a licensed pesticide applicator, who is held to be jointly or severally responsible for a violation of the Act or regulations promulgated thereunder, may be required by the Department to become a certified and licensed pesticide applicator as provided in N.J.A.C. 7:30-6.

(b) Any commercial pesticide operator required under (a) above to become a fully certified and licensed applicator shall be so notified by the Department and shall have a maximum of 30 days from the date of such notice to comply.

(c) Failure to comply with (a) and (b) above will result in the commercial pesticide operator license being immediately suspended pending the outcome of a hearing which shall be granted the registrant upon request. Such a hearing shall be granted on an expedited basis and shall be conducted 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.

**7:30-5.9 (Reserved)**