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#### **SUBCHAPTER 4. PESTICIDE DEALER BUSINESS**

##### **7:30-4.1 Licensing**

(a) No person shall cause, suffer, allow or permit the operation of a pesticide dealer business which distributes restricted use pesticide to end users in the State of New Jersey without first licensing such business with the Department, on forms provided by the Department, unless:

1. Such person is a duly licensed pharmacist dispensing a prescription pharmaceutical which contains a substance which could be classified as a restricted use pesticide;
2. Such person is a veterinarian administering or dispensing a restricted use pesticide for use on animals as a part of his or her practice;
3. Such person is a pesticide applicator who sells or distributes pesticides only as an integral part of his pesticide application service when such pesticides are dispensed only through equipment used during a pesticide application;
4. Such person is a State or county agency or instrumentality thereof and is providing pesticides to its employees for its own programs;
5. Such person is distributing a restricted use pesticide under the provisions of an experimental use permit issued by the EPA or the department; or
6. Such person is a scientist conducting limited educational research or experiments involving a restricted use pesticide for the purpose of gathering information about the pesticide.

(b) Each pesticide outlet from which restricted use pesticides are distributed, sold or offered for sale to end users, and each name under which such outlet operates, shall be required to be licensed separately. This subsection also applies to out-of-State pesticide outlets from which restricted use pesticides are distributed, sold, or offered for sale to New Jersey end users.

(c) A location, such as the home of a salesperson or agent of a pesticide dealer business, which is different from the main location of the business with which he is associated and from which transactions, other than those specifically excluded in the definition of a pesticide outlet, are conducted, shall be considered to be a separate pesticide outlet which shall be licensed with the Department as a pesticide dealer business.

(d) An annual license fee of \$150.00 shall be paid to the Department at the time of licensing for each separate license. The license period shall end on October 31 of each calendar year.

(e) Applications for new licenses will be accepted from pesticide dealer businesses throughout the calendar year, but a full year's license fee will be required. All such licenses will expire on October 31 following the date of application except that the Department may issue a license for an additional year when an application is initially filed during the last three (3) months of the license year.

(f) Any person required to become licensed as a pesticide dealer business shall submit to the Department as an integral part of the license the names, residences, and addresses

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of all salespersons or agents operating in the State of New Jersey who are authorized to solicit business and/or enter into contracts related to restricted use pesticide sales on their behalf.

(g) The license of a pesticide dealer business is not transferable.

(h) A pesticide dealer business shall notify the Department, in writing and within thirty (30) days, if he or she changes any information on his license application or if he or she is no longer engaged in the business of distributing or selling restricted use pesticides.

1. If a pesticide dealer business license is voided, the license card shall be returned to the Department, Pesticide Control Program.

(i) Every pesticide dealer business shall post in a conspicuous and accessible area a list of persons to contact in case of a pesticide accident. This list shall include, but not necessarily be limited to, the name, address, and telephone number of the New Jersey Poison Information and Education System, the telephone number of the Department environmental action hot line, and the telephone number of the local fire department.

(j) The Department may grant an exemption from the provisions of this subchapter to any person who has shown to the satisfaction of the Department that compliance with the provisions of this subchapter will result in undue hardship and that granting of the exemption shall not, in the opinion of the Department, result in danger or financial loss to man or the environment.

1. Examples of situations to which (j) above may apply, include, but are not limited to:

i. An applicator business going out of business;

ii. A private applicator going out of business; or

iii. The death of an applicator or dealer who still holds restricted use pesticides.

2. In situations where the Department has granted an exemption, the recordkeeping requirements and distribution restrictions mandated by N.J.A.C. 7:30-4.2 and 4.3 with the exception of N.J.A.C. 7:30-4.2(a)7. shall be followed.

i. Upon request by the Department, all records of sale shall be sent to the Pesticide Control Program, Attn. RUP Sales Records, P.O. Box 411, Trenton NJ 08625-0411.

#### **7:30-4.2 Records**

(a) A pesticide dealer business shall keep, for each distribution or sale of restricted use pesticide to an end user, a record containing the following information:

1. The name and address of the purchaser and the name and address of the purchaser's employer. If the purchaser is self-employed, the name and address of his business shall be kept;

2. The brand or trade name and the EPA product registration number of each restricted use pesticide distributed or sold;

3. The quantity of each restricted use pesticide distributed or sold;

4. The date of the distribution or sale;

5. The certified pesticide applicator license number used by the purchaser at the time

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of sale or distribution. If any of the acceptable alternatives to a State of New Jersey pesticide applicator's license, as specified in N.J.A.C. 7:30-4.3 are used, the certification or license number or other proof used, shall be recorded in lieu of the certified pesticide applicator license number;

6. If the purchaser's employer or business is a licensed pesticide applicator business, the license number of the pesticide applicator business; and
7. The name of the responsible pesticide dealer associated with the physical distribution and/or sale of restricted use pesticides.

(b) The records or copies thereof shall be kept for a minimum of three years at the pesticide outlet from which the distribution and/or sale was made.

(c) 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 addition, all records of restricted use pesticide sales performed by a person supervised by a licensed dealer shall be kept at the same pesticide outlet as the person supervising.

(d) The records of sale or distribution for all pesticides used under a State or Federal Experimental Use Permit, FIFRA Emergency Exemption or Section 24(c), Special Local Needs registration shall be kept separately from the other records of sale or distribution.

#### **7:30-4.3 Sale of restricted use pesticides**

(a) No pesticide dealer business shall distribute or sell a restricted use pesticide to an end user unless the purchaser presents a valid pesticide applicator license.

1. For the purposes of this section, the presentation of only a commercial pesticide operator's license is not acceptable.
2. For the purposes of this section, a valid certification issued by a Federal agency shall be acceptable in lieu of a State of New Jersey pesticide applicator's license if the purchaser is applying a pesticide on property or premises owned or rented by the Federal government, if the purchaser is a Federal employee engaged in the performance of his or her official duties, and if the purchaser has been certified as an applicator of pesticides under a Federal agency plan which has been approved by the United States Environmental Protection Agency pursuant to the provisions of Section 4 of FIFRA (7 U.S.C. §136(l)), as amended.
3. For the purposes of this section, any one of the valid operator licenses listed below is acceptable in lieu of a State of New Jersey pesticide applicator's license for obtaining chlorine gas, a restricted use antimicrobial:
  - i. Public Water Treatment Systems License;
  - ii. Public Water Distribution Systems License;
  - iii. Public Wastewater Treatment Systems License;
  - iv. Public Wastewater Collection Systems License; or
  - v. Industrial Wastewater Treatment Systems License, except NN license.
4. The exemptions in (a)3 above are valid unless federal regulation is changed to exclude them.

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5. For the purposes of this section, proof that the end user is a veterinarian is acceptable in lieu of a State of New Jersey pesticide applicator's registration if the veterinarian is obtaining restricted use pesticides for use on animals as part of his or her practice.
  6. For the purposes of this section, sale of a New Jersey State restricted use pesticide to an end user who will not be using it in New Jersey, shall not require a valid pesticide applicator license.
    - i. The dealer shall meet all the recordkeeping requirements pursuant to N.J.A.C. 7:30-4.2, with the exception of N.J.A.C. 7:30-4.2(a)5 and 6.
    - ii. The dealer shall also obtain a statement signed by the end user, that the New Jersey restricted use pesticide shall not be used in New Jersey.
    - iii. This paragraph applies only to pesticide dealers physically located within the boundaries of the State of New Jersey.
- (b) No person shall distribute or sell a restricted use pesticide for resale only to a retail dealer or distributor, without first informing the purchaser in writing that the pesticide being distributed or sold is a restricted use pesticide.
- (c) All transactions involving the sale or distribution of restricted use pesticides to end users shall be conducted by or under the direct supervision of a certified and licensed pesticide dealer employed at the pesticide outlet where the transactions take place.
  1. For the purposes of N.J.A.C. 7:30-3 and this subchapter, a person is under direct supervision only if the person supervised and the person supervising are employed at the same pesticide outlet.
  2. "Employed at the same pesticide outlet" means that the person supervising and the person supervised shall both have physical work spaces at the same pesticide outlet. In addition, all records of restricted use pesticide sales performed by the person supervised shall be kept at the same site as the person supervising and shall be immediately available upon request by the Department.

#### **7:30-4.4 Sale of general use pesticides**

- (a) No pesticide dealer business shall sell any pesticide to an unlicensed person who they know should be certified and licensed under the provisions of N.J.A.C. 7:30-6 or 8 unless the dealer business gives or has previously given the buyer the **Department's** information sheet on certification and licensing.
  1. A record equivalent to that required under N.J.A.C. 7:30-4.2(a) shall be kept for each sale referenced in N.J.A.C. 7:30-4.4(a) above (except the license number of the certified pesticide applicator and license number of the pesticide applicator business).
- (b) Indications that a person must be so certified and licensed include, but are not limited to, purchasing under the name of a business, farm, apartment complex, school or municipality.
- (c) The record of sale shall be kept for a minimum of three years and shall be

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immediately provided to the Department upon request.

#### **7:30-4.5 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.

(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 recordkeeping 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.

#### **7:30-4.6 Assignment of work**

No person shall require any individual to distribute restricted use pesticides unless such person is certified and licensed as a pesticide dealer or working under the direct supervision of a responsible dealer pursuant to N.J.A.C. 7:30-4.1(a).

#### **7:30-4.7 Denial, suspension, or revocation of a pesticide dealer business license**

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

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1. Refusing or, after notice failing to comply with provisions of the Act or this Chapter or any Order issued by the Department pursuant thereto;
2. 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;
3. Falsifying or making misleading statements in the license application for a pesticide dealer business;
4. Fail to keep or falsification of required records;
5. Allowing the dealer business license to be used by any person for any purpose which will be in violation of the provisions of the Act or this chapter;
6. Evading or attempting to evade the provisions of the Act or this subchapter 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;
7. Selling or distributing a pesticide in such a manner as to cause harm, injury or damage or a significant risk of harm, injury or damage to the public health, safety or welfare or the environment.

(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) 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.

(e) The pesticide dealer business shall return the pesticide dealer business license to the Department, Pesticide Control Program within two weeks of a suspension or revocation.

#### **7:30-4.8 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).