

Pesticide Regulation in New Mexico

Plain Language Summary for Pesticide Applicators and Dealers

NOTE: This document is provided as a summary of the New Mexico Pesticide Control Act (76-4-1 through 39, NMSA) and some of the regulations published under it (21.17 sections 50, 51, 53 and 56 NMAC). It only provides highlights and does not cover all provisions of the Act or regulations. For a complete understanding of the law regarding pesticides, be sure to refer to the Act and regulations themselves. In case of any discrepancies between this document and the Act or regulations, the law takes precedence.

Pesticide Control Act Chapter 76 Article 4 NMSA

The ***New Mexico Pesticide Control Act*** gives the New Mexico Department of Agriculture (NMDA) authority over pesticides and pesticide applicators in the state. It includes a number of definitions, requirements, authorities, fee caps, and grounds for license denials, suspension or revocation. Regulations promulgated under the Act include ***Pesticides; Control of Wood-Destroying Pests; Continuing Education Units for Pesticide Applicators; and Restricted-Use Pesticides.***

NMDA's Authority

NMDA is the "State Lead Agency" for pesticides, and has authority over the distribution and use of all pesticides in the state. The department can require pesticide registrants to submit the complete formula of any pesticide and information on its efficacy or tests of the claims it makes. It can classify pesticides as Restricted that may be federally unrestricted.

NMDA establishes certification requirements for pesticide applicators. It can establish standards and requirements for pesticide use, handling, and supervision of technicians for commercial applicators.

No city, county, or other political subdivision can adopt ordinances or rules that regulate pesticides in New Mexico. (Some municipalities have policies or memorials that govern their own use of pesticides on their own property, but they cannot regulate others' pesticide uses.)

NMDA can inspect and sample any pesticides sold in the state, and can sample land and agricultural products to check for illegal pesticide residues. It can enter public or private property in order to investigate complaints, inspect storage areas, or inspect pesticide equipment. It can review or copy any required records or any other information for the purpose of carrying out the provisions of the Pesticide Control Act. NMDA can seek a warrant if access is denied.

Definitions

Label and ***Labeling*** refer to all the printed material that comes with a pesticide. This includes the typical label attached to the container itself plus any material on the registrant's web site, flyers that make any kind of recommendation as to its uses, and supplemental labels distributed by the registrant

or their agents. If the label refers to a web site or other reference, information on that site or reference is considered part of the labeling.

Pest means any living thing that may be harmful to other living things (except man and animals) and includes plants, insects, bacteria, viruses, fungi, rodents, etc. Microorganisms harmful to people and animals (human and animal diseases) are not pests under this definition.

Pesticide means any substance intended for killing a pest, repelling a pest, preventing a pest, or otherwise affecting a pest. Herbicides, insecticides, fungicides, rodenticides, plant growth regulators, etc. are all pesticides.

Pesticide Dealers are persons who sell restricted-use pesticides. They must be licensed by NMDA.

A ***Pest Management Consultant*** is someone who gives advice or recommendations regarding the use of restricted-use pesticides. Pest Management Consultants cannot apply pesticides.

A ***Commercial Applicator*** is a person who applies any pesticides for hire.

A ***Public Applicator*** is an employee of a government agency whose duties for the agency include the use of pesticides.

A ***Non-Commercial Applicator*** is someone who uses pesticides but not in a commercial capacity. Typical Non-Commercial Applicators include apartment complex owners or managers, greenhouse managers, or golf course superintendents.

Private Applicators are farmers or ranchers who use pesticides to produce agricultural commodities on land they own or manage.

Pesticide and Device Labeling and Registration

All pesticides and devices must be registered by NMDA before they can be sold and used in the state. Most pesticides are registered by US EPA and have EPA Registration Numbers on their labels. Some pesticides that are exempt from EPA registration must still be registered by NMDA. NMDA also requires the registration of certain devices. The Pesticide Control Act has requirements for pesticide labels that largely mirror federal requirements.

The Pesticide Control Act makes it illegal to use or distribute unregistered pesticides. It also makes it illegal to distribute pesticides in containers other than the manufacturer's unopened container. This means you cannot purchase a large container of a herbicide, for example, and divide it up to sell or otherwise distribute. It is also illegal to use or distribute any pesticide that does not meet the stated quantity or contents or is in damaged or otherwise hazardous containers.

Types of Licenses

Pesticide licenses are intended for persons who apply, sell, or otherwise work with pesticides. NMDA can review any license, certification or permit if there is evidence that it was obtained or is being used for any other purpose.

Pesticide Dealer licenses are required for any establishment that sells restricted-use pesticides. Dealers are responsible for making sure they do not sell restricted-use pesticides to unlicensed persons or to persons whose certifications do not cover the type of pest control the product is labeled for. They must keep sales records that include the buyer's name, license number, brand name and EPA registration number of the pesticide, the quantity sold, and the date.

The Dealer License does not cover giving technical advice or recommendations regarding the use of pesticides. Dealers who also make recommendations or apply pesticides must hold additional licenses.

Pest Management Consultants (PMCs) are individuals who are certified to provide recommendations and advice for using restricted use pesticides. PMCs may NOT apply pesticides. Home inspectors who wish to inspect property for termites and other wood destroying pests may be licensed as PMCs with the 7D category. Agricultural consultants and employees of pesticide dealers who provide recommendations for using pesticides but never actually apply pesticides may also hold this license.

Noncommercial Applicators are individuals who use pesticides only on their property or their employer's property. Examples of noncommercial applicators are owners or managers of apartment complexes or other property, nursery growers, golf course superintendents, etc. Noncommercial Applicators must meet the same requirements as Commercial Applicators except for the financial responsibility requirement.

Noncommercial Applicators may NOT apply pesticides for hire.

Public Applicators are individuals who work for a government agency and whose duties include applying pesticides. Public Applicators are not required to pay testing or licensing fees, but must pass the General Pesticide exam, the Laws & Rules exam, and category exams for any type of pest control they will be doing.

Commercial Applicators apply or supervise the application of any pesticide for any purpose on someone else's property for compensation.

In order to qualify for a Commercial Applicator license an individual must be able to document 2 years of experience applying pesticides, or 20 hours of college credits in biological and/or agricultural sciences plus 1 year experience.

Commercial Applicator candidates must also provide proof of financial responsibility in the form of a liability insurance policy or a surety bond. Refer to the regulation for specifics on coverage.

Commercial Operators/Technicians are employees of Commercial Applicators who apply pesticides. Any employee of a Commercial Applicator who applies any pesticides, whether or not the pesticide is classified as Restricted, must be licensed. Commercial Operators/Technicians may only perform the types of pest control in which their Commercial Applicator employer is certified. Operators/Technicians must also be specifically certified in 7D, Wood-Destroying Pest Control, and hold their Termite Technician license, before they can perform any termite control.

Grounds for License Denial, Suspension or Revocation

NMDA can take action against an applicator if there is reason to believe he or she has violated the Pesticide Control Act. Some specific violations include:

- Using a pesticide "in a manner inconsistent with the labeling." In other words, the language on a label must be followed exactly.
- Operating in a "faulty, careless or negligent" manner.
- Not keeping the required records.
- Making false or fraudulent records.
- Applying a pesticide commercially without a license.
- Performing pest control in a category without the appropriate certification.
- Not complying with any of the regulations passed under the Pesticide Control Act.
- Aiding or conspiring with someone to violate the Pesticide Control Act.
- Allowing one's license to be used by another person.
- Using or supervising the use of a restricted-use pesticide when not certified.

NMDA can suspend or revoke any pesticide applicator license, and the courts can also assess a civil penalty of up to \$1,000 for each violation. Violations are petty misdemeanors.

Regulations

In addition to the Pesticide Control Act, these regulations apply to most commercial, public and noncommercial applicators: Pesticides; Control of Wood Destroying Pests; Continuing Education Units for Pesticide Applicators; and Restricted-Use Pesticides. Remember, for a complete understanding you should refer to the regulations themselves.

Pesticides 21.17.50 NMAC

This is the most detailed and longest of the regulations under the Pesticide Control Act. It provides additional detail and clarification of licensing, pesticide use, record keeping, certification categories, and most of the other information applicators should know.

Definitions

A ***Certified Applicator*** is anyone who has met the requirements to use and supervise the use of restricted-use pesticides. Certified applicators may be Commercial, Public, Private, or Non-commercial applicators.

Competent means qualified to mix, load, apply, and otherwise use pesticide products. Competency requirements are directly related to the nature of the work, the toxicity of the pesticide, and the level of responsibility involved. Competency is demonstrated by passing certification exams.

Direct Supervision is *verifiable* supervision of pesticide applicators and includes providing training and other guidance; the ability to be contacted whenever needed; and when required, being present at the pesticide use site.

Operators or ***Technicians*** are employees of licensed commercial applicators.

Service Containers are used to store or transport a concentrate or mixed pesticide. The original labeled container and application equipment are *not* service containers.

Service Vehicle means the vehicle used to transport application equipment and/or use-dilution preparations to an application site.

Use-Dilution Preparation means a pesticide that is no longer a concentrate but has been mixed to the rate that will be applied (mixed pesticide; diluted pesticide).

Licensing

Persons applying for *commercial*, *public*, and *noncommercial* licenses can select which categories of pest control they want to be certified in. Applicators can only apply pesticides in their categories. For descriptions of the categories refer to the regulation itself.

Candidates for licenses can retake failed exams as many times as necessary to pass (70% is passing) but must *complete all the license requirements* within 60 days. This means that from the date of an application's approval, the candidate must pass all required exams, furnish proof of insurance (for commercial), and pay the license fee, all within 60 days. If licensing is not completed within 60 days the candidate forfeits any exams he or she may have passed and must start over.

Commercial applicators must document that they hold insurance for applying pesticides that meets the following minimum coverage. NMDA cannot issue a commercial applicator license until proof of insurance has been received.

Liability insurance for applicators using *ground or manual equipment*: \$10,000 each occurrence and \$25,000 aggregate bodily injury; property damage of \$25,000; and single-limit \$50,000.

For applicators using *aerial equipment* (planes or helicopters) the limits go up to \$25,000 each occurrence and \$50,000 aggregate bodily injury; property damage of \$50,000; and single-limit \$100,000.

The deductible must be \$1,000 or less. As an alternative to insurance applicators can take out a surety bond of \$100,000.

License fees are \$75 for commercial applicators and noncommercial applicators and \$50 for operators/technicians. The exam fee is \$10 per exam. Public applicators are not required to pay fees. All licenses expire December 31 of the year issued.

Private applicators are farmers, ranchers, or other producers of agricultural commodities who need to use restricted-use pesticides in the course of their ag production. They must pass an exam and pay a \$15 fee for this license; it expires on December 31 five years after issuance.

Using Pesticides

All persons must follow the label directions, rates, precautions, etc. Failing to follow the label is an illegal use and a violation of state and federal law. Restricted-use pesticides can only be used by licensed applicators.

All applicators must have and use all personal protective equipment required by the labels of pesticides they are using. It must be kept clean and in good working order and users must understand how to wear it properly.

Service vehicles used by commercial applicators and operators must be prominently marked with the name of the firm and the commercial applicator's license number so they are visible from both sides of the vehicle. Service containers must be marked with the brand name or the common name of the pesticide they contain. Pesticides and application equipment in service vehicles cannot be left unattended unless locked up or otherwise inaccessible to other persons.

Pesticides in storage must be secure and safe from unauthorized access and the storage cabinet, room or building must be posted with an English/Spanish warning sign. Products must be stored so they cannot contaminate food, animal feed, fertilizer, seeds, clothing, or personal protective equipment.

Application equipment must be kept in good working order and must be calibrated. It must be cleaned between uses so no potentially incompatible or illegal residue from a previous application will result. Any pesticide left in application equipment at the end of a job must be disposed of properly, not just dumped somewhere. NMDA will inspect application equipment to verify its condition at the time of the inspection and will sticker it with the date inspected.

Pesticide waste must be disposed of properly and empty containers must be crushed or pierced so they cannot be re-used for any other purpose. Waste cannot be allowed to contaminate land or water and cannot be poured down a drain or allowed to go down a storm drain. Open burning or open dumping of pesticide waste or containers is illegal.

Applicators who use bait boxes must label the boxes with their business name, the name of its pesticide or active ingredient and its EPA registration number, and the Poison Control number (800-222-1222).

Records & Recordkeeping

Commercial, public and noncommercial applicators must keep detailed records of their pesticide applications and the applications made by anyone they supervise. Records must be completed within 24 hours of the pesticide application and must be kept for at least 2 years. NMDA must be furnished with a copy upon written request, and the customer must also be provided a copy at his written request.

The application record can be in any format as long as it has all of the following:

- The customer's name;
- the date, time, and location of the application;
- The name and EPA registration number of the pesticide or pesticides used,
- The concentration or rate applied;
- The target pest and site (name of crop or specific site);
- If the application is made outdoors, the wind direction and speed and the temperature at the time of the application;
- The total volume of mixed pesticide (use-dilution preparation) applied, whenever the pest control category is agricultural, forest, ornamental, aquatic, right-of-way, public health, or wood destroying pest control; and
- The name and license number of the individual who applied the pesticide.

Control of Wood Destroying Pests *21.17.51 NMAC*

Additional requirements apply to applicators and operators who apply pesticides for termites or other wood-destroying pests, and for pest management consultants who conduct inspections or make recommendations for controlling wood-destroying pests in structures (category 7D).

Applicators must document one year of experience in wood-destroying pest control, attend an approved training session, and pass the certification exam. Operators/termite service technicians and pest management consultants must attend approved training and pass the certification exam. In order to maintain 7D certification individuals must earn four 7D-specific CEUs each year in addition to the four non-specific CEUs required to renew their license.

Working in this category also requires that additional records be kept. Applicators are responsible for creating a detailed graph or drawing of the structure that shows all areas treated and the type of building construction.

Continuing Education for Pesticide Applicators *21.17.53 NMAC*

This regulation spells out the requirements for continuing education that must be met by all applicators and defines what kind of information qualifies for CEUs (continuing education units). NMDA approves programs for CEUs if they include information on pesticide use and safety and the laws regarding pesticides. CEUs must be earned before the license expires or the applicator will have to take the exams again.

Commercial, public, and noncommercial applicators must earn four CEUs each year to be eligible to renew their licenses.

Applicators and operators who are certified in wood-destroying pest control (termites, or 7D) must have an additional four CEUs specific to that category in order to retain their 7D certification.

Private applicators must earn five CEUs during their five-year license period.

Restricted-Use Pesticides *21.17.56 NMAC*

This regulation primarily establishes 2,4-D herbicides as *state-restricted-use pesticides* if they are labeled primarily for use in agriculture, rangelands, rights-of-way, or non-croplands. 2,4-D products intended and labeled primarily for turf, ornamental, and home use are not restricted. Only licensed applicators can purchase restricted 2,4-D herbicides and businesses that sell any restricted 2,4-D must be licensed as Dealers.