

NEBRASKA ADMINISTRATIVE CODE

TITLE 25 - DEPARTMENT OF AGRICULTURE

CHAPTER 2 - PESTICIDE REGULATIONS

001 Statement of Purpose. The purpose of these regulations is to aid in the administration of the Pesticide Act, Neb. Rev. Stat. §§2-2622 to 2-2659.

002 Administration. These regulations are administered by the Department of Agriculture located in the State Office Building, Fourth Floor, 301 Centennial Mall South, Lincoln, Nebraska. The mailing address is P.O. Box 94756, Lincoln, Nebraska 68509-4756. The telephone number is (402) 471-2351.

003 Definitions. In addition to the terms listed below, the definition of terms found in the Pesticide Act apply to such terms when found in these regulations.

003.01 LEVEL OF VIOLATION means the alleged violation is a first or subsequent violation.

003.02 FIRST VIOLATION means a violation not meeting the definition of a subsequent violation.

003.03 SUBSEQUENT VIOLATION means the alleged violator has been₁ found by an order of the director or any court to have committed a violation of the act, or has not contested a violation listed in a settlement agreement or a warning letter, within the three years immediately preceding the date of committing the current alleged violation.

003.04 BASE FINE means the amount of the administrative fine set by regulation for a particular violation of the act prior to any adjustments for gravity or size of business.

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003.05 SETTLEMENT AGREEMENT means a written agreement between the department and an alleged violator resolving any matter before the department.

003.06 MINOR HARM means actual or potential harm which is or would be of short duration, has no lasting effects or permanent damage, or is easily reversible, and harm did not or would not result in significant monetary loss.

003.07 SERIOUS OR WIDESPREAD HARM means mean actual or potential harm to human health or to the environment which does not meet the parameters of minor harm.

003.08 FEDERAL CERTIFICATION REGULATIONS means 40 CFR Part 171 as it existed on January 1, 2019 which is found in the July 1, 2018 Edition.

003.09 HANDLER means a person who mixes and loads restricted-use pesticides under the direct supervision of a certified applicator but does not apply such pesticides.

004 Federal Certification Regulations. The federal certification regulations are adopted and incorporated herein by reference so long as these standards do not conflict with the Pesticide Act. If there is an inconsistency between the act and the federal certification regulations, the act controls. A copy of the federal certification regulations is attached to these regulations on the department's website at <https://nda.nebraska.gov/regulations/plant/PesticideActCFR.pdf>.

005 Standards for Pesticide Applicators.

005.01 General Standards for Certified Applicators. Competency standards include demonstration of practical knowledge of the principles and practices of pest control and proper and effective application of pesticides as set forth in applicable federal certification regulations. Federal certification regulations require all certified applicators demonstrate the ability to read and understand pesticide labeling. Private applicators not taking a certification examination may demonstrate their ability to read and understand a label by completing a label exercise during certification training. Those applicators using restricted-use pesticides through an irrigation system additionally need to comply with licensing requirements of the Nebraska Chemigation Act, Neb. Rev. Stat. §§46-1101 through 46-1148.

005.02 Commercial and Noncommercial Applicators.

005.02A Categories. Except for the sodium fluoroacetate predator control category, commercial and noncommercial applicators may elect to be trained, examined and certified according to the categories set out in the federal certification regulations and the following categories:

005.02A(1) Sewer Use of Metam Sodium. For applications of metam sodium in sewer lines for plant root control.

005.02A(2) Wood Destroying Organisms. For applications of restricted-use or general-use pesticides which are not fumigants in or around structures for the control of wood destroying organisms such as termites, carpenter ants, fungus or beetle species.

005.02A(3) Wood preservation. For applications of any restricted-use pesticide for preservative treatment of wood or wood products to protect wood that will be exposed to weather.

005.02A(4) Wildlife Damage Control. For applications of, restricted-use pesticides other than gaseous or solid fumigants, in the management of vertebrate wildlife to control the damage that they cause.

005.02B Specific Standards of Competency. Competency standards for commercial and noncommercial applicators include a demonstration of competence in the application and handling of pesticides specific to their certification on the basis of a written examination, and as appropriate, performance testing prior to initial certification. Standards for determination of competency in each category are as set by the federal certification regulations and as follows.

005.02B(1) Sewer Use of Metam Sodium. Competency standards include demonstration of practical knowledge of the secondary effects of metam sodium on downstream water bodies (streams, rivers, ponds, and groundwater) and lateral and upstream residential and nonresidential sewer connections; the importance and use of personal protective equipment; and the proper measurement, calibration, and application of metam sodium.

005.02B(2) Wood Destroying Organisms (excluding structural fumigation). Competency standards include demonstration of practical knowledge of structural wood destroying organisms, appropriate application equipment, procedures including rodding and trenching, topical application of pesticides, and local injection of specially labeled wood treatments in infested wood, new control technology, environmental and health hazards associated with the use application wood destroying pest control pesticides, and the appropriate measures to be taken to reduce exposure to humans and pets residing in the infested structure.

005.02B(3) Wood preservation. Competency standards include demonstration of practical knowledge of: conditions for which a wood preservative is used; all applicable treating and testing equipment; methods of applying wood preservatives and factors influencing their effectiveness; potential hazards to human health and the environment, including safety procedures and equipment to minimize exposure and first aid in the event of accidents; waste disposal as well as proper handling of spills, and the need for informing purchasers of treated wood products of the precautions they should take for handling, use, and disposal of treated wood products.

005.02B(4) Wildlife Damage Control. Competency standards include demonstration of practical knowledge of protected and unprotected vertebrate pests; applicable laws and regulations protecting pests and vertebrates; methods of control of pest animals; and the potential effects of such control on humans, non-target organisms, and the environment; methods of monitoring target sites for non-target animals, creating and following transect monitoring protocols and alerting the proper authorities when non-target animals are impacted by the control program.

005.02C Continuing education units (CEUs) may be used as a method of recertification for commercial and noncommercial applicators. Partial CEU credit may be provided by

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the department to applicators for those approved educational programs that satisfy a portion of the required recertification topics when such education programs are received prior to the expiration of the certified applicators' license. CEUs may be available for recertification on programs offered or sponsored by the University, trade organizations, associations, and commercial enterprises. All CEU programs must be approved in advance by the department and are subject to the availability of resources the department has to monitor such programs. CEU providers will submit to the department, sixty days prior to the CEU event, a detailed agenda, list and qualifications of speakers, and related certification categories.

005.03 Private Applicators. Private applicators who intend to apply restricted-use pesticides by fixed or rotary wing aircraft in the production of or in support of the production of agricultural commodities will meet the same standards of competency and be licensed as a commercial or noncommercial applicator in order to be certified.

005.03A Categories for Private Applicators. Except for the sodium cyanide predator control and sodium fluoroacetate predator control categories, private applicators may elect to be trained and certified according to the categories set out in the federal certification regulations.

005.03B Standards of Competency. Competency standards for private applicators include a demonstration of competence in the application and handling of pesticides specific to their certification. Standards for determination of competency in each category are as set by the federal certification regulations.

005.04 Noncertified Applicators and Handlers. The minimum standard for noncertified applicators and their supervising certified applicators is that they meet the requirements set forth in §2-2642 and §2-2643 of the Act including all applicable requirements of the federal certification regulations. The minimum standard for handlers and their supervising certified applicators is that they meet all applicable requirements of the federal certification regulations.

005.04A Adequate supervision by voice or electronic method includes any form of communication in standard use that can adequately summon the supervising licensed certified applicator to the site of application and provide for a two-way conversation.

005.04B The reasonable period of time that it would take the supervising licensed certified applicator to be physically at the application site is three hours, starting at the time the supervising applicator is contacted by the noncertified applicator and ending when the supervising applicator arrives on the site.

005.05 Training, Testing and Application Requirements.

005.05A Under an executive order issued by the Governor of Nebraska, the department has been directed to offer military personnel who were serving active duty during the period of time they would have otherwise renewed their applicator certification, a one-year extension on the license. The department requires credible evidence from the applicant to verify their military active duty status.

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005.05B Any person attending recertification training will be required to attend the entire training program, and if a department proctor determines the applicant is spending too much time outside of the meeting, the department proctor is authorized to dismiss the person from the training session.

005.05C All electronic communication devices are to be turned off during the training and/or testing session. Personal calculators are allowed in testing sessions so long as they are not also able to communicate with other devices outside of the testing session. Persons attending training or testing will be allowed to use electronic communication devices during breaks if they turn off the device upon re-entering the training or testing room.

005.05D Any person determined or suspected of cheating by the department's proctor while taking an examination will be asked to terminate the test session and return at a later date to retake the examination. Repeat offenses may result in the department barring the applicant from future examinations, thus preventing the applicant from obtaining a license. Cheating on an examination includes, but is not limited to: using electronic devices to communicate with other individuals or devices, using study materials during the examination, communicating with other testers in the test session by any means, exchanging examination booklets with other testers, using a copied or stolen examination booklet before or during the examination, photocopying, photographing, or otherwise duplicating the test booklet in whole or in part, or using any other method intended to defeat the purpose of testing the personal knowledge and competence of the applicant to apply pesticides. Any discovery by the department that applicants for a pesticide applicator license are using or have used electronic devices (other than calculators) to aid in completing the examinations will be required to surrender such device to the department proctor, and could potentially be dismissed from the testing session. The department proctor will return such device to the applicant upon completion of the examination.

006 Record Keeping.

006.01 Sufficient record keeping for private applicators includes all of the following information on the application of all restricted-use pesticides, complete the record within 14 days of the application, and maintain the record for a period of three years from the date of the application:

006.01A The brand or product name and the EPA registration number of the pesticide that was applied;

006.01B The total amount of the pesticide applied;

006.01C The location of the application, the size of area treated, and the crop, commodity, stored product, or site to which a pesticide was applied. A separate record of application is required to be made for each unique location. The location of the application may be recorded using any of the following designations:

006.01C(1) County, range, township, and section;

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006.01C(2) An identification system utilizing maps or written descriptions which accurately identifies location, such as global positioning system locators;

006.01C(3) An identification system established by a USDA agency which utilizes maps and a numbering system to identify field locations; or

006.01C(4) The legal property description.

006.01D The month, day, and year on which the pesticide application occurred. A separate record of application is necessary for each unique date of application. If an application is suspended for any reason, the proper procedure is that a separate application record is made for each day of application with the specific area treated for each separate date clearly recorded. For applications made over multiple days, the record lists all days during which the application was in effect, from the introduction of the pesticide until the target site was cleared for re-entry;

006.01E The name and certification number of the certified applicator who applied or who supervised the person making the application; and

006.01F Applications of pesticides made on the same day in a total area of less than 1/10 of an acre are classified as spot applications and require the following elements be recorded:

006.01F(1) Brand or product name and EPA registration number;

006.01F(2) Total amount applied;

006.01F(3) Location designated as "spot application" with an indication of the section, township, range and county of the target site; and

006.01F(4) The date of application.

006.02 Sufficient record keeping for commercial and noncommercial applicators includes all of the following information on the application of restricted-use pesticides within 48 hours of the application and keeping the records for a minimum of three years following the date of the application at their principal place of business. For commercial applicators applying structural pest control pesticides sufficient record keeping includes the following information on all general use pesticide applications made for those purposes. Additionally, it is recommended that commercial applicators applying general use pesticides also keep such records. Such records are to be provided to the customer or person contracting for the application, on their request, within four business days of the request.

006.02A Name and address of the person for whom the pesticide was applied.

006.02B Name and certified applicator license number of person making the application. When a noncertified applicator makes the application, include both the noncertified and supervising licensed applicator information.

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006.02C Location of the pesticide application. A separate record of application is required to be made for each unique location. The location of the application may be recorded using any of the following designations:

006.02C(1) County, range, township, and section;

006.02C(2) An identification system utilizing maps or written descriptions which accurately identifies location, such as global positioning system locators;

006.02C(3) An identification system established by a USDA agency which utilizes maps and a numbering system to identify field locations; or

006.02C(4) The legal property description.

006.02D Site, crop, commodity or stored product of application.

006.02E Day, month, and year of application. A separate record of application is necessary for each unique date of application. If an application is suspended for any reason, the proper procedure is that a separate application record is made for each day of application with the specific area treated for each separate date clearly recorded. For applications made over multiple days, the record lists all days during which the application was in effect, from the introduction of the pesticide until the target site was cleared for re-entry.

006.02F Initial starting time of application.

006.02G Product name and EPA registration number of the pesticide applied.

006.02H Total amount of pesticide applied to site per application.

006.02I Size of area treated, i.e., acres, cubic feet, square feet, linear feet, crack and crevice, trap or bait placement, or spot treatment.

006.03 Dealers. Record keeping for each person who distributes restricted-use pesticides in the state is sufficient if it is completed within two working days of the transaction, is a record of each transaction involving a restricted-use pesticide, is kept for a period of 36 months from the date of the transaction and includes the following information:

006.03A The name and address (residence or principal place of business) of the person to whom the restricted-use pesticide is made available. No dealer may make a restricted-use pesticide available to an uncertified person unless he or she can document that the distribution is to a licensed dealer or the restricted-use pesticide will be applied by a certified applicator with a current and correct category license for the pesticide. Such documentation includes all information required in subsections (B) and (C) below.

006.03B The name and address (residence or principal place of business) of the certified applicator or dealer who will apply the restricted-use pesticide if different from paragraph 006.03A above;

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006.03C The license number of a certified applicator or dealer license number, the state or other governmental entity that issued the certification document, the expiration date of the certification or license and the categories in which the applicator is certified if appropriate;

006.03D The product name, EPA registration number, and the special local need registration number, if any, on the label of the pesticide;

006.03E The quantity of the pesticide involved in the transaction; and

006.03F The date of the transaction.

007 Fines and Penalties. The department case review process will determine the appropriate fine or penalty for each violation of the Pesticide Act in accordance with §2-2626(9), §2-2650 and any other applicable provisions of the act.

007.01 When it is determined that an administrative fine is an appropriate penalty for a violation of the Pesticide Act, the actual amount of such administrative fine is calculated by determining the base fine and making the necessary adjustments for gravity and the size of business as set forth in this section. The department may, however, issue any fine at the statutory maximum for any egregious violation. The base fines established for the specific violations of the Pesticide Act as set forth in Neb. Rev. Stat. §2-2646 are as follows:

007.01A A violation of 2-2646(1):

007.01A(1) Base fine for a first violation is \$1,000.

007.01A(2) Base fine for a subsequent violation is \$2,000.

007.01B A violation of 2-2646(2):

007.01B(1) Base fine for a first violation is \$1,000.

007.01B(2) Base fine for a subsequent violation is \$3,000.

007.01C A violation of 2-2646(3):

007.01C(1) Base fine for a first violation is \$1,000.

007.01C(2) Base fine for a subsequent violation is \$4,000.

007.01D A violation of 2-2646(4) or (5):

007.01D(1) Base fine for a first violation is \$2,500.

007.01D(2) Base fine for a subsequent violation is \$5,000.

007.01E A violation of 2-2646(6):

007.01E(1) Base fine for a first violation is \$1,000.

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007.01E(2) Base fine for a subsequent violation is \$2,000.

007.01F A violation of 2-2646(7):

007.01F(1) Base fine for a first violation is \$4,000.

007.01F(2) Base fine for a subsequent violation is \$5,000.

007.01G A violation of 2-2646(8):

007.01G(1) Base fine for a first violation is \$1,000.

007.01G(2) Base fine for a subsequent violation is \$2,000.

007.01H A violation of 2-2646(9):

007.01H(1) Base fine for a first violation is \$1,000.

007.01H(2) Base fine for a subsequent violation is \$2,000.

007.01I A violation of 2-2646(10):

007.01I(1) Base fine for a first violation is \$5,000.

007.01I(2) Base fine for a subsequent violation is \$5,000.

007.01J A violation of 2-2646(11):

007.01J(1) Base fine for a first violation is \$1,000.

007.01J(2) Base fine for a subsequent violation is \$2,000.

007.01K A violation of 2-2646(12):

007.01K(1) Base fine for a first violation is \$1,000.

007.01K(2) Base fine for a subsequent violation is \$2,000.

007.01L A violation of 2-2646(13):

007.01L(1) Base fine for a first violation is \$2,000.

007.01L(2) Base fine for a subsequent violation is \$5,000.

007.01M A violation of 2-2646(14):

007.01M(1) Base fine for a first violation is \$1,000.

007.01M(2) Base fine for a subsequent violation is \$5,000.

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007.01N A violation of 2-2646(15):

007.01N(1) Base fine for a first violation is \$1,000.

007.01N(2) Base fine for a subsequent violation is \$4,000.

007.01O A violation of 2-2646(16):

007.01O(1) Base fine for a first violation is \$2,000.

007.01O(2) Base fine for a subsequent violation is \$5,000.

007.01P A violation of 2-2646(17):

007.01P(1) Base fine for a first violation is \$2,000.

007.01P(2) Base fine for a subsequent violation is \$5,000.

007.01Q A violation of 2-2646(18).

007.01Q(1) Base fine for a first violation is \$2,000.

007.01Q(2) Base fine for a subsequent violation is \$5,000.

007.01R A violation of 2-2646(19) or (20):

007.01R(1) Base fine for a first violation is \$2,000.

007.01R(2) Base fine for a subsequent violation is \$5,000.

007.01S To violate any other provision of the act.

007.01S(1) Base fine for a first violation is \$1,000.

007.01S(2) Base fine for a subsequent violation is \$2,000.

007.02 Gravity adjustment criteria. The base administrative fine may be changed by considering the gravity of harm of the violation and the gravity of misconduct of the person committing the violation. The specific numerical value will be assigned to each category as set forth in the following charts:

007.02A Gravity of harm.

Violation	Circumstances	Value
Pesticide	Toxicity - Category I pesticides, signal word "DANGER", restricted-use pesticides (RUP's).	2
	General-use pesticides, toxicity - Category II, signal word "WARNING", and Categories III and IV, signal word "CAUTION."	1
Harm to Human Health	Actual serious or widespread harm to human health.	5
	Potential serious or widespread harm to human health.	4
	Minor actual harm to human health.	3
	Minor potential harm to human health, neither serious nor widespread.	2
	Harm to human health is unknown.	1
	No actual or potential harm to human health.	0
Environmental Harm	Actual serious or widespread harm to the environment (e.g., damage or contamination to crops, certified organic crops, water, livestock, wildlife, wilderness, or other sensitive natural areas).	5
	Potential serious or widespread harm to the environment.	4
	Minor actual harm to the environment.	3
	Minor potential harm to the environment, neither widespread nor substantial.	2
	Harm to environment is unknown.	1
	No actual or potential harm to the environment.	0

007.02B Gravity of misconduct.

Violation	Circumstances	Value
Compliance History	Two or more prior violations in previous three years of FIFRA or state law, either similar or unrelated to current violation.	3
	One prior violation in previous three years of FIFRA or state law similar to current violation.	2
	One prior violation in previous three years of FIFRA or state law unrelated to current violation.	1
	No prior FIFRA or Nebraska Pesticide Act violation.	0
Culpability	Knowing or willful violation of the statute. Knowledge of the general hazardousness of the action.	4
	Violation resulting from faulty, careless, or negligent action.	3
	Culpability unknown.	1
	Violation was neither knowing nor willful and did not result from faulty, careless, or negligent action.	0
Remedial Efforts	Violator voluntarily notified NDA of incident or violation.	-1
	Violator instituted steps to correct the violation immediately after discovery or notification of the violation.	-2
	Violator immediately notified NDA of incident and instituted steps to correct the violation.	-3
Financial Gain	Noncompliance with Pesticide Act has or would have resulted in significant financial gain for violator.	3
	No financial gain to violator as a result of violation.	0

007.02C To determine the total gravity value, the base fine is adjusted based on the total number of points calculated from 007.02A and 007.02B above and multiplying it by the gravity adjustment values.

Adjustments for Gravity

Total Gravity Value	Adjustment
3 or below	25% of base value
4-6	50% of base value
7-10	75% of base value
11 or above	100% of base value

007.03 To determine the actual administrative fine, the fine as determined in 007.02C above is multiplied by the appropriate value corresponding with the size of business criteria set forth below. In determining the amount of any fine, there is a rebuttal presumption that the gross revenue from all sources of any violator is over \$800,000.

Size of Business Criteria

Gross Revenue From All Sources	Multiplier Value
\$0-200,000	0.2
\$200,001-400,000	0.4
\$400,001-600,000	0.6
\$600,001-800,000	0.8
over \$800,001	1.0

007.04 Nothing in these regulations prevent the department from entering into a settlement agreement with any person violating the Pesticide Act or the rules and regulations adopted and promulgated under it which specifies a different fine or penalty than specified in the act or regulation.

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008 Worker Protection Standards (Arid REI extension). The counties listed below have an annual average rainfall of 25 inches or more over a 25 year period and are not subject to the arid Restricted Entry Interval (REI) extension for organophosphate or methyl-carbamate pesticides:

Adams	Fillmore	Pierce
Antelope	Gage	Phelps
	Hall	Platte
Boone	Hamilton	Polk
Buffalo	Harlan	Richardson
Burt	Jefferson	Rock
Butler	Johnson	Saline
Cass	Kearney	Sarpy
Cedar	Keya Paha	Saunders
	Knox	
Clay	Lancaster	Seward
	Loup	
Colfax	Madison	Thayer
Cuming	Merrick	Thurston
Custer	Nance	
Dakota	Nemaha	Washington
Dixon	Nuckolls	Wayne
Dodge	Otoe	Webster
Douglas	Pawnee	York

009 Emergency Exemption Permit.

009.01 The department may allow the application of a pesticide under an emergency exemption contingent upon continued compliance by the registrant of the pesticide with the provisions of the Pesticide Act and these rules and regulations.

009.02 The registrant of an emergency exemption pesticide is obligated to ensure that such pesticide is distributed only to those persons who have obtained a permit to distribute such pesticide in Nebraska.

009.03 Application. Any person wishing to distribute, including those persons only distributing to other dealers, an emergency exemption pesticide may make application to the department for a permit on forms provided by the department. Only persons holding such permits are allowed to distribute the pesticide for such application.

009.04 Issuance. The department may issue an emergency exemption permit to applicants who have completed the application and who have agreed to abide by the conditions set out in 009.05 below. Permits are valid until the dates specified on the permit, unless sooner revoked by the department for a violation by the holder of the provisions of the act or the rules and regulations.

009.05 Conditions. All permits issued under 009.04 above are subject to the following:

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009.05A Only products approved by the department pursuant to this regulation are allowed to be distributed as identified on the permit.

009.05B Distribution is only allowed to be made to persons holding an emergency exemption permit, or the end user of the emergency exempted pesticide.

009.05C No distribution is allowed to in any way violate the restrictions of the label, or emergency labeling of the pesticide. The label and the emergency labeling is to be provided with the distribution of the pesticide.

009.05D No distribution is allowed to be made to any person whom the department has determined has violated the provisions of this rule and regulation or has violated the provisions of any emergency exemption permit issued to that person.

009.05E Persons distributing pesticides under an emergency exemption permit are only allowed to do so if they maintain records of distributions for at least three (3) years following the effective date of the distribution. Such records are the same as those required for a restricted-use pesticide as set forth in 006.03 above. In addition, a final report is to be submitted to the Department of Agriculture of all distributions of the pesticide within 60 days following the end of the season or expiration of the permit.

009.06 Notification. Any person that is aware of any adverse affects resulting from the pesticide is to report such information to the department.

010 Annotation. Neb. Rev. Stat. §§2-2622 to 2-2659.