



Pesticide Laws and Regulations

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This NebGuide provides general information on federal and state laws and regulations regarding pesticide applicator certification, licensing, and pesticide use in Nebraska.

Federal laws legalize pesticides and their use in the US. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), first approved in 1947, has been amended several times. FIFRA and the Nebraska Pesticide Act are the principal statutes governing pesticide use in Nebraska. Additional state laws regarding the use of pesticides in irrigation water and facilities that handle bulk pesticides are administered by the Nebraska Department of Environmental Quality.

FIFRA

Congress intended FIFRA to protect both people and the environment by regulating the use of pesticides. The law assures pesticide registration, classification, labeling, distribution, use, disposal, and other topics. Sections pertaining to pesticide users address user categories, recordkeeping, certification, and penalties for violations.

FIFRA requires pesticide manufacturers to register each product with the US Environmental Protection Agency (EPA). Some products are registered as restricted use pesticides (RUPs); these have the potential to harm human health and the environment if no restrictions are imposed. Other registered pesticides are grouped as general use pesticides (GUPs). In some cases, the same active ingredient may be in both GUPs and RUPs. In addition, EPA has exempted “minimum risk” pesticides from the FIFRA registration requirement; these pose little to no risk to human health or the environment. Under FIFRA, only certified applicators can use RUPs. Certification means a certifying agency recognizes that a person is competent and thus authorized to use or supervise the use of RUPs. People become certified by passing an exam or, in some cases, taking training. According to FIFRA, anyone can use GUPs according to the label without being certified. Additional legislation in Nebraska, discussed later, has exceptions to this.

FIFRA defines two types of certified applicators: private and commercial. According to FIFRA, a private applicator is certified to use or supervise the use of an RUP to produce an agricultural commodity on property he or she owns or rents, on an employer’s property, or on the property of another person *if* there is no compensation other than trading personal services. FIFRA defines a commercial applicator as any person who uses or supervises the

use of RUPs for any purpose other than as given in the definition of a private applicator.

In addition, FIFRA covers pesticide registration and label approval. Pesticide labels are legal documents and must be followed. Federally registered product labels contain sections that address personal protection; protection of others; and protection of groundwater, surface water, endangered species, pollinators, etc. Some pesticide labels direct an applicator to online information, such as for additional required training or to protect endangered species using information from a federal online bulletin (see G1893 in Resources). The online bulletin is considered a legal extension of the container label and must be followed.

Worker Protection Standard

Under FIFRA’s authority, EPA issued the Worker Protection Standard (WPS) in 1992. Its goal is to reduce the risk of pesticide poisoning and injury to agricultural workers (detasslers, harvesters, etc.) and pesticide handlers (mixers, loaders, applicators, etc.). WPS covers agricultural workers and pesticide handlers who are employed on farms, forestry operations, nurseries, and enclosed space production areas (greenhouses, polyhouses, mushroom houses, etc.). When pesticides with product labels having an Agricultural Use Requirements section are used to produce agricultural commodities, WPS requires agricultural employers to provide certain protections. These protections include proper notification, training, personal protective equipment, transport to medical assistance if needed, etc. Under WPS, anyone under 18 years old is prohibited from being a pesticide handler (except for the owner of an agricultural establishment or immediate family member) or doing early-entry work during a restricted-entry interval (REI). WPS was last revised in 2015 with all requirements in effect in 2018. For more information on WPS, see the Resources section.

Nebraska Pesticide Act and Regulations

The Nebraska Pesticide Act was enacted in 1993. It designates the Nebraska Department of Agriculture (NDA) as the lead state agency responsible for administering the Nebraska Pesticide Act under FIFRA and gives several other state agencies specific responsibilities. The Act requires registration of pesticides sold in Nebraska and state certification and licensing of those who wish to purchase and use RUPs and, in certain situations, GUPs. Training for certification and renewal must be NDA-approved

or offered by the Nebraska Extension Pesticide Safety Education Program.

Nebraska's Pesticide Act and related regulations differ from FIFRA in several aspects. One difference is that in Nebraska, a pesticide license is required for applicators and mixer/loaders of all RUPs; however, NDA has allowed mixer/loaders to operate without licensing so long as they complete NDA-approved WPS Handler training every three years and document that they took the training.

Nebraska has categories of certification in addition to those listed by FIFRA. These categories are for commercial and non-commercial applicators, defined later.

1. Agricultural Pest Control—Plant
 - 1A. Fumigation of Soil
2. Agricultural Pest Control—Animal
3. Forest Pest Control
4. Ornamental and Turf Pest Control
5. Aquatic Pest Control
- 5S. Sewer Root Control with Metam Sodium
6. Seed Treatment
7. Right-of-Way Pest Control
8. Structural/Health Pest Control
- 8W. Wood Destroying Organisms
9. Public Health Pest Control
10. Wood Preservation
11. Fumigation
12. Aerial Pest Control (includes Ag Pest Control Plant category)
14. Wildlife Damage Control

Two subcategories (Regulatory and Demonstration/ Research) expand the scope of an applicator's primary category(ies) such as Agricultural Pest Control (1 or 2) or Ornamental and Turf Pest Control (4). The Wildlife Damage Control category (14) covers the chemical control of vertebrate pests such as prairie dogs in pastures or rangeland, coyotes in pastures/holding pens, moles and ground squirrels in lawns/parks/golf courses, etc., when using GUPs and RUPs. The management of vertebrate pests invading structures with pesticides is covered by the Structural/Health Pest Control category (8).

The application of GUPs by a commercial applicator in the Ornamental and Turf, and the Structural categories requires a pesticide license, as does outdoor disease vector control in the Public Health Pest Control category if the applicator is doing it on behalf of a political subdivision of the state.

The Nebraska Pesticide Act also stipulates that the minimum age for licensing is 18. Realize that the federal minimum age of 18 applies under WPS requirements. In Nebraska, custom farmers are classified as commercial pesticide applicators. Another variation from FIFRA is that in Nebraska, noncertified individuals working under the direct supervision of a certified applicator may have a once-in-a-lifetime, 60-day exemption from licensing when applying pesticides, discussed later.

The Act defines another type of applicator, noncommercial applicators, for those who do not apply pesticides commercially, and do not meet the definition of private applicator. The non-commercial applicator includes any person who applies RUPs "... only on lands owned or controlled by his or her employer or for a governmental agency or subdivision of the state." Any employee of a political subdivision of the state who applies GUPs or RUPs for outdoor vector control must obtain a noncommercial license in the Public Health category before applying such pesticides. A pesticide applicator applying pesticides for hire on

behalf of a governmental agency must be classified as a commercial applicator in the Public Health category.

Pesticide Applicator Certification and Licensing

People seeking initial certification (a prerequisite of licensing) as commercial or noncommercial pesticide applicators in Nebraska must successfully pass a general standards core exam and one or more specific category examinations, proctored by NDA. Then, the person is considered competent to apply pesticides and is certified. To legally apply RUPs and in some cases, GUPs, a commercial applicator must pay a \$90 license fee. No fee is charged for a noncommercial license. Commercial and noncommercial applicator licenses are valid for up to three years, expiring April 15 of the third year. To become recertified and then eligible to pay the state license fee to become licensed, the person must attend either a Nebraska Extension recertification training program or an equivalent training program approved by NDA before the expiration date on the license. Any applicator also may recertify by examination.

To become certified as a private applicator, individuals must complete one of the following:

1. An NDA-approved training program provided by Nebraska Extension, or
2. An NDA-approved self-study training program provided by Nebraska Extension, or
3. Pass an examination administered by NDA.

People who attend these training sessions or pass the exam are considered competent to apply pesticides as private applicators and are certified. Then, the private applicator must pay a \$25 state license fee to obtain the license. The same options apply for private applicator recertification, required every three years.

60-Day Exemption from Licensing

In general, a person must be licensed to use an RUP. An individual required to be licensed may use such pesticides as an unlicensed applicator for a period of up to 60 consecutive days beginning on the first date of the pesticide application. The 60-day exemption is allowed once in that applicator's lifetime. In addition, applicators who have had a commercial, noncommercial, or private license at *any* time are NOT eligible for a 60-day exemption from licensing.

To legally use pesticides as an unlicensed applicator, the individual or his/her employer must apply to NDA for the 60-day exemption within 10 days of the first pesticide application. Both the licensed and unlicensed applicator are liable for any violations. The licensed applicator, as a supervisor, must possess the correct license category for the work being done and must do the following:

1. Determine the level of experience and knowledge of the unlicensed person using the pesticide.
2. Provide verifiable (documented) detailed guidance on how to conduct each pesticide application performed under his/her direct supervision.
3. Accompany the unlicensed person to at least one site that typifies each different pesticide use the unlicensed individual performs.
4. Be in direct two-way communication with the unlicensed applicator during the application.

5. Be able to physically be on the pesticide use, storage, or mixing/loading site, if needed, within three hours.

For more information: <http://www.nda.nebraska.gov/pesticide/60day.pdf>

Recordkeeping Requirements—Distributors/Dealers

NDA requires those who sell RUPs to hold a Nebraska pesticide dealer's license and be registered with NDA. Dealers who distribute RUPs must keep a record of each transaction involving an RUP for three years. These records must be made available for inspection upon request by NDA or EPA. NDA regulations require that such records include:

1. Name and address (residence or principal place of business) of the person to whom the RUP was made available. No dealer may make an RUP available to an unlicensed person unless he/she can document that the distribution is to a licensed dealer or the RUP will be used by a certified/licensed applicator.
2. Name and address (residence or principal place of business) of the licensed applicator or dealer who will use the RUP, if different from Section 1 above.
3. Number on the person's license or dealer license number, the state issuing the applicator certificate, expiration date, and the category of certification, if applicable.
4. Product name, EPA registration number, and if applicable, the state special local needs (SLN) registration number on the pesticide label.
5. Quantity of pesticide sold.
6. Transaction date.

Whenever an unlicensed person is making the purchase, EPA recommends that dealers also examine one of the following at the time of sale:

1. Original pesticide applicator's license and driver's license or other identification of the person for whom the buyer is purchasing the RUP.
2. A photocopy or other facsimile of the applicator's license, a signed statement from the licensed applicator authorizing the purchase, and proper identification of the buyer.
3. A photocopy or other facsimile of the applicator's license, a copy of a signed contract or agreement between the applicator and the purchaser that provides for the proper use of the RUP, and proper identification of the buyer.

Recordkeeping Requirements—Commercial and Noncommercial Applicators

NDA regulations require commercial and noncommercial applicators of RUPs, and commercial applicators of GUPs for structural pest control, to record the following:

1. Name and address of the person for whom the pesticide was applied.
2. Name, address, and applicator license number of the person making the application. If an unlicensed person makes the application, information must be recorded both for that person and the supervising applicator.
3. Location or address of the pesticide application.
4. Specific name of target pest(s); (aphids, crabgrass, etc.)

5. Application site (name of crop or commodity, type of field, type of surface, etc.).
6. Day, month, year, and starting time of application.
7. Trade name and EPA registration number of the pesticide applied.
8. Rate of pesticide applied per unit of measure (pounds per acre, ounces per 1,000 square feet, etc.). For spot treatment, indicate mixture rate (1 ounce per gallon).
9. Total amount of pesticide applied to site.
10. Area or size of treated site (acres, cubic feet, square feet, linear feet, crack and crevice, trap or bait placement, or spot treatment).
11. Method of disposal of any unused, diluted pesticide. If no unused pesticide remains, indicate such.
12. Any other information required by the specific product label.

NDA further recommends that wind speed and direction be recorded along with ambient air temperature, and where applicable, temperatures of soil, grain, and water. NDA also recommends that commercial applicators of GUPs for lawn care keep pesticide application records. Information for each commercial or noncommercial pesticide application must be recorded within 48 hours of the application and kept for a minimum of three years. They may be kept in any format. Application records of RUPs custom applied for a grower must be provided to the grower within 30 days or held on behalf of the grower.

Recordkeeping Requirements—Private Applicators

Private applicators must maintain records of each RUP application. Federal standards apply in Nebraska: records must be completed within 14 days of the application, and maintained for three years, in any format. Records must include the following:

1. Brand or product name and EPA registration number of the pesticide applied.
2. Total amount of pesticide applied.
3. Location of application; size of area treated; and the crop, commodity, stored product, or site to which a pesticide was applied. Location may be recorded using any of the following:
 - a. County, range, township, and section.
 - b. An accurate identification system using maps and/or written descriptions (GPS).
 - c. An identification system established by a USDA agency, e.g., Farm Service Agency or Natural Resources Conservation Service (with maps or a field numbering system).
 - d. The legal property description.
4. Month, day, and year of application.
5. Name and certification number of licensed applicator who made or supervised the application.
6. Any other information required by the product label.

See a sample form at https://pested.unl.edu/documents/PRIVATE_APPLICATION_RECORD.pdf

Recordkeeping—Spot Applications

RUP applications made on the same day in a total area of less than 1/10 of an acre, excluding greenhouse and nurseries, are considered spot applications or spot treatments. For private

and commercial/noncommercial spot applications, records must include:

1. Brand or product name and EPA registration number.
2. Total amount applied.
3. Location noted as “spot application” with the section, township, range, and county of the treatment.
4. Month, day, and year of the application.
5. Commercial/noncommercial spot applications must include the mixture rate.

Extension recommends that you keep detailed records, such as “Spot application: Product X, EPA Reg. XXX-XXX, 10 oz. (mixture rate of 2 oz. per gal), 5/1/2019; musk thistle sprayed on W edge of Field 5 (Section 24, T15N, R8E, Saunders Co.)”

Recordkeeping—Additional Information

Both FIFRA and the Nebraska Pesticide Act state that the label must be followed when making a pesticide application. Each product label has specific information regarding use to reduce risk to the applicator, other people, nontargets, and the environment. Some products (RUP dicamba) require additional data to be collected and recorded regarding weather conditions. Some (RUP dicamba, paraquat) may require additional training. In addition, some pesticides may require you to gather additional information from online sources or through a phone call regarding protection of endangered species. Others may require that you check for sensitive crops or sites in the vicinity of planned applications, either by physically checking or through an online field registry such as FieldWatch, DriftWatch, or BeeCheck. Even if not required, it is to your benefit to document that you performed those activities. Read and follow the label *every time* you use a pesticide.

Access to RUP Application Records

Related sections of FIFRA and the Nebraska Pesticide Act give NDA the authority to inspect private, commercial, and non-commercial applicator records and establishments. Attending li-

censed health care professionals or those acting under their direction, USDA representatives, and state regulatory representatives with credentials have legal access to these records. Authorized people can copy the records, but the licensed pesticide applicator must keep the originals.

Violations and Penalties

NDA's pesticide regulations specify a broad range of actions for violations of the Nebraska Pesticide Act. Administrative fines imposed for violations are established using a system of base fines are adjusted according to the seriousness of the offense and business size. Base fines range from \$1,000 to \$4,000, depending on the nature of the violation. Base fines for subsequent violations range from \$2,000 to \$5,000, depending on the violation.

Penalties are adjusted using numerical factors that increase with the gravity of the violation. The cumulative total of the “gravity values” is used to determine the percentage of base value that will be assessed for a violation. Size of business also is considered in setting the penalty amount. The Nebraska Pesticide Act also includes civil penalties for criminal or repeat intentional violations. These penalties have a maximum of \$15,000 for each violation.

Resources

- Federal Insecticide, Fungicide and Rodenticide Act, as amended, <http://www.law.cornell.edu/uscode/text/7/chapter-6>.
- Hygnstrom, J.R., C.L. Ogg, and C.A. Alberts. 2016. Worker Protection Standard for Agricultural Establishments. EC3006. <http://extensionpublications.unl.edu/assets/pdf/ec3006.pdf>.
- Nebraska Department of Agriculture Pesticide Program, <http://www.nda.nebraska.gov/pesticide/>
- Nebraska Pesticide Act and Pesticide Regulations, as amended (Title 25, Chapter 2), <http://www.nda.nebraska.gov/regulations/plant/PesticideAct.pdf> for the law; <http://www.nda.nebraska.gov/regulations/plant/PesticideRegulations.pdf> for the regulations
- Nebraska Extension Pesticide Safety Education Program, <http://pested.unl.edu>
- Ogg, C.L., E.C. Bauer, J.R. Hygnstrom, E.A. Dorn, 2014. Pesticides and the Endangered Species Protection Program. G1893. <http://extensionpublications.unl.edu/assets/html/g1893/build/g1893.htm>

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