

**Proposed Amendments to New York State's
Regulations Relating to the Use of Pesticides
6 NYCRR Part 325
Commercial Lawn Care
Express Terms**

(Subdivisions 325.1(a) through (r) remain unchanged.)

Subdivision 325.1(s) is revised to read as follows:

325.1(s) "Commercial lawn application" means the application of pesticide to ground, trees, or shrubs on public or private outdoor property. The following pesticide applications will not be considered commercial lawn application:

- (1) the application of pesticide for the purpose of producing an agricultural commodity;
- (2) residential application of pesticides;
- (3) the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;
- (4) the application of pesticides by or on behalf of agencies except that agencies are subject to commercial lawn application visual notification requirements **[of this Part, once promulgated]** pursuant to subdivisions 325.40(h) and (i) of this Part where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; or
- (5) the application of pesticides on golf courses or turf farms.

(Subdivisions 325.1(t) through (bd) remain unchanged.)

Subdivision 325.1(be) is revised to read as follows:

325.1(be) "Residential lawn application" means the application of general use pesticides to ground, trees or shrubs on outdoor property owned, leased or rented by the individual making such application. The following pesticide applications are not considered residential lawn applications:

- (1) the application of pesticides for the purpose of producing an agricultural commodity;
- (2) the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;
- (3) the application of pesticides by or on behalf of agencies except that agencies shall be subject to commercial lawn application visual notification requirements **[of this Part, once**

promulgated] pursuant to subdivisions 325.40(h) and (i) of this Part where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; or

(4) the application of pesticides on golf courses or turf farms.

(Subdivision 325.1(bf) through section 325.39 remain unchanged.)

New Section 325.40 is adopted to read as follows:

325.40 Commercial Lawn Applications. The requirements of this section pertain to any commercial lawn application of a pesticide except for the application of a pesticides to a right-of-way as described in sections 325.55, 325.56 and 325.57 of this Part upon their promulgation.

(a) Written Contracts. Prior to a commercial lawn application, except a commercial lawn application on property owned, leased or rented by the employer of the pesticide applicator, the pesticide applicator or business providing these services must enter into a written contract with the property owner or owner's agent. A written contract must:

(1) state the approximate date or dates of the proposed pesticide application or applications, subject to the following conditions:

(i) an approximate date may not be greater than seven consecutive calendar days in length unless the owner or owner's agent agrees to a longer time period for the approximate date or dates of applications, so long as the following statement is prominently displayed in the contract: "The New York State Department of Environmental Conservation requires pesticide applicators to provide a schedule of approximate pesticide application dates. An approximate pesticide application date may not exceed seven days unless you agree to a time frame greater than seven (7) days that is stated in this contract.";

(ii) the date must reference the month, day(s) and year; and,

(iii) in the event that application on the date or dates specified becomes infeasible, the person who is to provide such application must give the owner or owner's agent oral or written notice of any proposed alternate date or dates, and must receive acceptance of such alternate date or dates from the owner or owner's agent prior to initiating any commercial lawn application unless notification of alternate dates are waived in accordance with subdivision (b) of this section.

(2) state the total number of pesticide applications to be provided. The written contract between the owner or owner's agent and the pesticide applicator or business may be amended to change the number of commercial lawn applications if the owner or owner's agent gives written instructions requesting such change which shall, when so requested, constitute an amendment of the written contract;

(3) state the total cost of the pesticide application service to be provided;

(4) include, or have attached to and made a part of the written contract, all required pesticide label information, with the exception of the application instructions that do not pertain to the pesticide application being performed. In addition, the following pesticide label information must be in at least 12 point type and include:

(i) a list all substances to be applied including brand names and generic names of active ingredients;

(ii) any warnings that appear on the label of pesticides to be applied that are pertinent to the protection of humans, animals or the environment; and,

(iii) a statement, in bold print, that identification of substances to be applied including brand names and generic names of active ingredients and warning information pertinent to the protection of humans, animals and the environment is attached to and made a part of the contract, in the event that any required pesticide label information is attached to the contract;

(5) include, or have attached to and made a part of the written contract, in at least 12 point type the name, address, telephone number and pesticide business registration number of the pesticide business providing the commercial lawn application service. This information may be modified only by written notice to the owner or owner's agent;

(6) include, or have attached to and made a part of the written contract, in at least 12 point type, the pesticide applicator certification identification card number of a person employed by the pesticide business who will provide or supervise the commercial lawn application service. This information may be modified only by written notice to the owner or owner's agent;

(7) state the name of the owner or owner's agent and the address of the premises to be treated;

(8) be signed by both the pesticide applicator or business providing the commercial lawn application and the owner or owner's agent of the property to which the commercial lawn application is to be made; provided, however, the signature of the owner or owner's agent is not required if the pesticide applicator or business possesses a separate document that specifically evidences the owner or owner's agent signature as acceptance of the written contract such as a copy of any pre-payment check or a credit card authorization or other payment receipt in the exact amount specified in the written contract for the agreed-upon services;

(9) state the contract services may be renewed only by means of a new written contract containing the information required by this section.

(b) Waiver of alternate dates. A premises owner or the owner's agent may waive notification of

an alternate date or dates of commercial lawn application required by subdivision (a) provided that:

(1) the written contract states in at least 12 point type that the owner of the premises or the owner's agent has the right to waive notification of alternate date or dates of lawn application; and

(2) the owner or owner's agent agrees to waive the right to notification of alternate date or dates of lawn application by signing a waiver provision in the contract that is separate from the contract signature as required in paragraph (a)(8) of this section.

(c) Additional waivers prohibited. No provision of the written contract required by subdivision (a) of this section, other than that permitted in subdivision (b) of this section, may be waived.

(d) Specific pesticide notification. If the contract does not state which of a group of pesticides will be applied on a proposed date, then a written notice which indicates the specific pesticides to be used and the approximate date or dates of application must be provided to and received by the owner of the premises or the owner's agent prior to the pesticide application.

(e) Multiple year contracts. If the term of the written contract is more than one calendar year in length, the pesticide business must at least once during the second and any subsequent calendar year of the contract term and prior to any commercial lawn application during such calendar year obtain signed written confirmation that the owner or owner's agent who is a party to the contract retains the legal right to authorize pesticide applications to the premises covered by the contract and authorizes continuation of the contract.

(f) Contract transfer. Written contracts may be transferred from one pesticide business providing a commercial lawn application service to another such business if the successor business provides the contract holder, prior to any pesticide application by such business, with written notice of the contract transfer which includes the name, address, telephone number and pesticide business registration number of the successor pesticide business and the pesticide applicator certification identification card number of a person employed by such pesticide business who will provide or supervise the commercial lawn application service.

(g) Copies of contracts. The pesticide applicator or pesticide business making a commercial lawn application must retain a complete copy of each written contract for a minimum of three years following the expiration of the contract and shall make such copies available for inspection upon request by the department.

(h) Visual notification. Visual notification markers must be posted by any person performing a commercial lawn application described in this section. Such markers must be at least four inches by five inches in size and text must be in contrasting colors to the background in letters at least three-eighths of an inch in height. All such markers must include on the front of the marker:

(1) the phrase “PESTICIDE APPLICATION,” “PESTICIDE TREATMENT,” or “PESTICIDES APPLIED;”

(2) the date and time of the commercial lawn application;

(3) instructions to not enter the treated portion of the property or remove the markers for 24 hours; and

(4) a prominent visual warning symbol, at least 1.5 inches in diameter, such as a person walking a dog with a slash through the symbol or a stern face with an outward facing raised open hand.

(i) Visual notification marker posting. Visual notification markers:

(1) must be posted such that the top of the marker is at least twelve inches above the ground; and

(2) must be placed by the pesticide applicator or business making the commercial lawn application prior to the application and remain posted for a period of not less than 24 hours following the application; and

(3) must be placed such that the front of the marker is clearly visible from outside the treated area and placed not more than fifty feet apart along the perimeter of the treated area; and

(4) need not be placed at any portion of the perimeter of the treated premises or treated area which is rendered impassible by a fence, wall, hedge or similar device or natural topographic feature; provided, however, every treated premises or treated area must be marked by at least two visual notification markers, except only one visual notification marker is required when an individual tree or shrub is treated which can only be approached from one direction.

(j) Whenever a pesticide applicator makes a commercial lawn application to property owned, leased or rented by the applicator’s employer, such applicator must, at least 24 hours prior to the commercial lawn application, provide to the property owner or owner’s agent or other appropriate person in a position of authority over the property with a written copy of the pesticide label, or a written copy of all information contained on the pesticide label of each pesticide to be applied. The written copy of all information may exclude pesticide application instructions that do not pertain to the commercial lawn application. Such owner or owner’s agent or other appropriate person in a position of authority must provide to an occupant of such property, upon request and at reasonable times, such written copy of the pesticide label or written copy of all information contained on the pesticide label of each pesticide to be applied.

(Section 325.41 to end remain unchanged.)