

TITLE 10
SPECIAL REQUIREMENTS FOR COMMERCIAL
AND RESIDENTIAL
LAWN APPLICATIONS

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§ 33-1001. Requirements and restrictions.

1. Prior to any commercial lawn application the applicator shall enter into a written contract with the owner of the property or his agent specifying the approximate date or dates of application, number of applications, and total cost for the service to be provided and shall supply the property owner or his agent with a written copy in at least 12 point type of:

- a. a list of substances to be applied including brand names and generic names of active ingredients;
- b. 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
- c. the company name, address, telephone number, business registration number and applicator certification identification card number.

2. In the event that application on the date or dates specified becomes infeasible, the person who is to provide such application shall give the owner or his agent oral or written notice of the proposed alternate date or dates, and shall receive acceptance of such alternate date or dates from the owner or his agent prior to initiating commercial lawn application.

3. Persons providing commercial lawn applications shall maintain copies of all contracts required pursuant to subdivision one of this section.

§ 33-1003. Visual notification.

1. All persons providing commercial lawn application shall affix markers to be placed within or along the perimeter of the area where pesticides will be applied. Markers are to be placed so as to be clearly visible to persons immediately outside the perimeter of such property. Such markers shall be posted at least twelve inches above the ground and shall be at least four inches by five inches in size.

2. The markers required pursuant to this section shall be in place on the day during which the pesticide is being applied and shall instruct persons not to enter the property and not to remove the signs for a period of at least twenty-four hours. Such instruction shall be printed boldly in letters at least three-eighths of an inch in height.

§ 33-1004. Lawn applications; certain municipalities.

1. Notwithstanding any other provision of law to the contrary, any county not contained entirely within a city, and any city with a population of one million or more, may, after public hearing, adopt a local law comprised of the following provisions in their entirety and without exception including all applicable definitions as provided in this article:

- a. All retail establishments that sell general use pesticides for commercial or residential lawn application shall display a sign meeting

standards, established by the commissioner pursuant to subdivision one of section 33-1005 of this article, in a conspicuous place, and such sign shall be placed as close as possible to the place where such pesticides are displayed.

b. (i) At least forty-eight hours prior to any commercial lawn application of a pesticide, the person or business making such application shall supply written notice, as defined in subdivision three of section 33-1005 of this article, to occupants of all dwellings, as defined in paragraph d of subdivision five of section 33-0905 of this article, on abutting property with a boundary that is within one hundred fifty feet of the site of such application; and to owners, owners' agents, or other persons in a position of authority for all other types of premises, as defined in paragraph d of subdivision five of section 33-0905 of this article, that are on abutting property with a boundary that is within one hundred fifty feet of the site of such application. Owners or owners' agents of multiple family dwellings shall supply such written notice to the occupants of such multiple family dwellings and for all other types of premises, owners, owners' agents or other persons in a position of authority shall post such written notice in a manner specified by the commissioner.

(ii) The prior notification provisions of this paragraph shall not apply to the following:

A. the application of anti-microbial pesticides and anti-microbial products as defined by FIFRA in 7 U.S.C. Section 136 (mm) and 136 q (h) (2);

B. the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging and biting insects, including venomous spiders, bees, wasps and hornets. This section shall not exempt from notification the use of any fogger product or aerosol product that discharges to a wide area;

C. the use of non-volatile insect or rodent bait in a tamper resistant container;

D. the application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under 40 CFR Part 152.25;

E. the application of a pesticide which the United States Environmental Protection Agency has determined satisfies its reduced risk criteria, including a biopesticide;

F. the use of boric acid and disodium octaborate tetrahydrate;

G. the use of horticultural soap and oils that do not contain synthetic pesticides or synergists;

H. the application of a granular pesticide, where granular pesticide means any ground applied solid pesticide that is not a dust or powder;

I. the application of a pesticide by direct injection into a plant or the ground;

J. the spot application of a pesticide, where spot application means the application of pesticide in a manually pressurized or non-pressurized container of thirty-two fluid ounces or less to an area of ground less than nine square feet;

K. the application of a pesticide to the ground or turf of any cemetery; and

L. an emergency application of a pesticide when necessary to protect against an imminent threat to human health, provided, however, that prior to any such emergency application, the person providing such application shall make a good faith effort to supply the written notice required pursuant to this title. Upon making an emergency application,

the person making such application shall notify the commissioner of health, using a form developed by such commissioner for such purposes that shall include minimally the name of the person making such application, the pesticide business registration number or certified applicator number of the person making such application, the location of such application, the date of such application, the product name and United States Environmental Protection Agency registration number of the pesticide applied and the reason for such application.

c. (i) All persons performing residential lawn applications treating an area more than one hundred square feet shall affix markers to be placed within or along the perimeter of the area where pesticides will be applied. Markers are to be placed so as to be clearly visible to persons immediately outside the perimeter of such property. Such markers shall be posted at least twelve inches above the ground and shall be at least four inches by five inches in size.

(ii) The markers required pursuant to this paragraph shall be in place on the day during which the pesticide is being applied and shall instruct persons not to enter the property and not to remove the signs for a period of at least twenty-four hours. Such instruction shall be printed boldly in letters at least three-eighths of an inch in height.

2. Any county not contained entirely within a city or any city with a population of one million or more that adopts a local law pursuant to the provisions of this section, shall, in addition to any authority otherwise conferred in this chapter, have concurrent authority to enforce such local law administratively, provided however that all sanctions, which shall be assessed after providing a hearing or opportunity to be heard, shall be as specified in section 71-2907 of this chapter and shall be payable to and deposited with the enforcing municipality.

2-a. Within twenty days after the adoption of a local law pursuant to this section, the clerk or other officer designated by the legislative body shall forward one certified copy thereof to the commissioner and one to the attorney general.

2-b. Any local law adopted pursuant to this section shall take effect on the first day of January after it shall have been adopted.

3. The commissioner of health shall review any emergency form submitted pursuant to this section to ensure that the circumstance did warrant such emergency application. Such forms shall be kept on file at the department of health for three years from the date of application and shall be made available to any person upon request.

* § 33-1005. Rules and regulations.

The commissioner shall have the power to promulgate the rules and regulations necessary and appropriate to carry out the purposes of this title.

* NB There are 2 § 33-1005's

* § 33-1005. Commissioner's regulations.

For purposes of implementing section 33-1004 of this article in any county not contained entirely within a city or any city with a population of one million or more that has adopted a local law pursuant to such section:

1. The commissioner shall promulgate rules and regulations establishing uniform standards for a consumer pesticide use information sign which shall be placed in retail establishments that sell general use pesticides for commercial or residential lawn application. This sign shall contain the following information:

a. a warning notice directing consumers to follow directions on labels;

b. a provision to inform the customer of the posting requirements set forth in paragraph c of subdivision one of section 33-1004 of this article; and

c. a recommendation that the customer notify neighbors prior to the application of pesticides so that such neighbors may take precautions to avoid pesticide exposure.

2. The commissioner shall prepare and publish, in consultation with the commissioner of health, educational materials explaining the requirements of paragraphs b and c of subdivision one of section 33-1004 of this article and section three hundred ninety-c of the social services law and the human and environmental health effects of lawn care pesticides.

3. a. The commissioner shall promulgate rules and regulations specifying the following: the content and form of the written notice required in paragraph b of subdivision one of section 33-1004 of this article, with the content consisting minimally of the following:

(i) the address of the premises where application is to be done;

(ii) the name and telephone number and pesticide business registration number or certified applicator number of the person providing the application;

(iii) the specific date of each pesticide application and two alternative dates to the proposed date of application when, due to weather conditions, the pesticide application on the proposed date is precluded;

(iv) the product name or names and the United States Environmental Protection Agency registration number or numbers of the pesticide or pesticides to be applied;

(v) a prominent statement that reads: "This notice is to inform you of a pending pesticide application to neighboring property. You may wish to take precautions to minimize pesticide exposure to yourself, family members, pets or family possessions. Further information about the product or products being applied, including any warnings that appear on the labels of such pesticide or pesticides that are pertinent to the protection of humans, animals or the environment, can be obtained by calling the National Pesticides Telecommunications Network at 1-800-858-7378 or the New York State Department of Health Center for Environmental Health Info line at 1-800-458-1158".

b. The commissioner shall review and revise as necessary the phone numbers required to appear in notices pursuant to this section and pursuant to section four hundred nine-h of the education law and section three hundred ninety-c of the social services law. Notwithstanding the provisions of the state administrative procedure act, such phone numbers shall be established as a rule by publication in the environmental notice bulletin.

4. The commissioner shall promulgate rules and regulations specifying: the manner in which persons providing commercial lawn application shall supply written notice as required under paragraph b of subdivision one of section 33-1004 of this article including, but not limited to, mailing, or leaving with a responsible adult or in a conspicuous location on the abutting property; the manner in which the owner or owner's agent of multiple family dwellings covered under paragraph b of subdivision one of section 33-1004 of this article shall supply such written notice to the occupants of such multiple family dwellings; and for all other premises covered under paragraph b of subdivision one of section 33-1004 of this article, the manner in which the owner, owner's

agent or other person in a position of authority shall supply such written notice. Such rules and regulations shall specify a manner in which persons providing commercial lawn applications may provide an option to occupants of dwellings to decline further notices.

5. The commissioner is hereby authorized to promulgate rules and regulations, not inconsistent with any other provisions of law, specifying procedures for the department's investigation and processing of alleged violations of paragraph c of subdivision one of section 33-1004 of this article that pertain to persons performing residential lawn applications. Such uniform procedures may require complaints to be in the form of a sworn statement containing the facts upon which an alleged violation is based and may provide that the department is not required to perform any testing or sampling in relation to the investigation of any such alleged violations.

* NB There are 2 § 33-1005's