

# PESTICIDE CERTIFICATION & TRAINING



Department of  
Environmental  
Conservation

## Fall 2020 Stakeholder Meeting

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The Pesticide Certification and Training portion of Part 325 will be moved to its own Part. In addition, the Department requests stakeholder input on the following proposals:

- **Incorporate the federal Certification of Pesticide Applicators rule**

Concern – The Department has to incorporate all of the mandatory requirements of the federal Certification of Pesticide Applicators rule to maintain its primacy enforcement authority.

- Federal Requirement – Establish a nation-wide minimum age of 18 for all certified applicators and noncertified applicators working under their direct supervision.
- Proposed changes to regulations:
  - Change minimum age for certified private applicators from 17 to 18;
  - Establish a minimum age of 18 for certified commercial applicators;
  - Change minimum age for technicians from 17 to 18
  - Maintain the minimum age for apprentices as 16 but prohibit apprentices from handling federal restricted use pesticides (RUPs) until they turn 18.
- Federal Requirement – Requires certification categories be established for private and commercial applicators performing aerial application, soil fumigation and non-soil fumigation.
- Proposed changes to the regulations:
  - Add a soil/non-soil fumigation to both commercial and private applicator certification categories
  - Eliminate the one aerial category for both private and commercial applicators and replace with separate aerial categories for private and commercial applicators.
- Federal Requirement – Requires annual training for noncertified applicators
- Proposed changes to the regulations:
  - Technicians take training during 3-year certification cycle
  - Apprentices take Department approved course annually in addition to the existing initial training requirement.
- Federal Requirement – Requires recordkeeping for noncertified applicator training.
- Proposed changes to the regulations:
  - Add the apprentice annual training records to the current apprentice training records requirements; and
  - Add training requirements for technician recertification.
- Federal Requirement – Eliminate non-reader certification for private applicators, which allows persons who cannot read to obtain certification to use specific RUPs.
- Proposed change to the regulations:
  - Eliminate Special Permits.
- Federal Requirement – Require use of only materials approved by the State certifying authority and provided and collected by the proctor at the certification examinations.
- Proposed changes to the regulations:
  - Initiate closed book certification examinations and prohibit applicants from bringing reference materials to the exam.

- **Streamline Pesticide Certification Categories**

Concern - There are numerous categories and subcategories currently, making it difficult for applicators to initially qualify and obtain recertification credits. In addition, certain certification categories have overlapping application methods, sites and/or uses.

- Proposed Changes to the Regulations:

- Renumber the categories and remove the current “subcategory” language.
    - Redefine some categories to include items currently allowed through policy documents or enforcement discretion memoranda (eg. Category 7a-Structural & Rodent allowance for asphyxiants for rodent control).
    - Combine similar categories to allow applicants to meet qualification requirements more easily.

- **Add Certification Categories**

Concern – Pesticide applications conducted for mold remediation are not adequately regulated.

- Proposed Changes to the Regulations:

- Create a category for the use of antimicrobials for mold remediation.
    - Include business registration requirements for businesses providing mold remediation services.

- **Update Certification Eligibility (aka 30 Hour) Course Requirements**

Concern- Certain certification categories do not need a 30- hour course to explain all of the material necessary for initial eligibility.

- Proposed Changes to the Regulations:

- Modify the 30- hour course requirement so that its elements reflect the complexity of the particular category.
    - Establish a core training standard for initial certification.

- **Include Requirements for Documentation of Certification Eligibility**

Concern- Information required to be provided to the Department to prove eligibility for initial certification is not outlined in regulation. In addition, some pathways for initial eligibility are not included.

- Proposed Changes to the Regulation:

- Clarify the eligibility documentation requirements for certification.
    - Describe seasonal category allowances.
    - Describe allowances for eligibility that are not currently in regulation, including using private experience for technician eligibility, using technician experience for private eligibility, out-of-state experience, previous certification.

- **Develop a Core Recertification Credit Requirement**

Concern - Some certified applicators choose to recertify with only category-specific training; these applicators may be missing out on updated safety and/or regulatory information pertinent to the industry.

- Proposed Changes to the Regulations:

- Develop a minimum core credit requirement for all categories’ recertification.

- **Eliminate Penalty Credits**

Concern - Continuing education credits should not be used as a penalty. The requirement for penalty credits causes confusion.

- Proposed Changes to the Regulations:
  - Revise recertification expiration deadlines.
  - Simplify the process for reinstatement.
  - Require examination 60 days after recertification date.

- **Modify Apprentice Training Requirements**

Concern- Some apprentices may not be receiving an adequate amount of instruction prior to conducting applications; others may be required to fulfill amounts of training that may be redundant.

- Propose Changes to the Regulations:
  - Require 6 hours of instruction for all apprentices making applications.
  - Require 30 hours of use experience for apprentices making applications under direct or indirect supervision.
  - Require 15 hours of use experience for apprentices making applications under direct or indirect supervision in additional category.

- **Clarify the Retention Time for Apprentice Training Records**

Concern - Proof of an apprentice's training history may not be maintained for the duration of the apprentice's employment, making it difficult to verify proper supervision and training.

- Proposed Changes to the Regulations:
  - Require training records to be maintained throughout apprentice's employment and a minimum of 3 years after apprentice's employment.

- **Outline Course Sponsor and Instructor Requirements**

Concern - Existing Department procedures for training courses are not outlined in regulation.

- Proposed Changes to the Regulations:
  - Incorporate procedures regarding courses into regulations including course sponsor responsibilities for submission of applications and rosters.
  - Clarify requirements for instructor credentials.
  - Include requirements for distance-learning courses.

## **CONTACT INFORMATION**

### **Pesticide Certification & Training Regulations**

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# PESTICIDE BUSINESS & AGENCY REGISTRATION

## RESTRICTED PESTICIDES DEALERS COMMERCIAL PERMIT

### Fall 2020 Stakeholder Meeting

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The Business and Agency Registration and Commercial Permit portions of Part 325 and Part 326 will be moved to their own Parts and revised. The Department requests stakeholder input on the following proposals:

- **Update Business Registration Requirements**

Concern - Existing regulations need clarification and updating to include current Department business registration procedures and current business practices.

- Proposed changes to the regulations:
  - Specify businesses and locations that must register:
    - Those that advertise pesticide services or apply pesticides for-hire.
    - Each legal business name and a limited number of DBA's per registration.
    - Each place-of-business location.
    - Out-of-state companies applying in NY.
  - Address subcontracting of pesticide applications to a registered business:
    - Develop appropriate regulatory language to specify requirements for subcontracting.
  - Update business insurance requirements:
    - Update NY regulations to be similar to other states' requirements. Many states require an endorsement covering pesticide applications, in most categories, but have lower liability coverage limits.
  - Clarify requirements and set restrictions for employees and supervising applicators:
    - Persons applying pesticides or supervising the application of pesticides must be (W-2) employees. Contractors/consultants may not supervise the application of pesticides or apply pesticides.
    - A certified commercial applicator may supervise at a limited number of business location(s).
    - Persons in a non-supervisory role may be employed by multiple businesses.
  - Allow technicians to register businesses in most categories:
    - Expand the categories of certification with which a technician can register a business.
  - Modify vehicle and equipment identification requirements:
    - Eliminate DEC issued decals for pesticide vehicles and ride-on equipment.
    - Pesticide Businesses would place the registration number on each vehicle as required for registered businesses in 4 nearby States.

- **Update Agency Registration Requirements**

Concern - Existing regulations need updating, clarification, and a provision allowing for Agency Shared Services Agreements.

- Proposed changes to the regulations:
  - Clarify agency registration requirements:
    - Specify the agencies and locations that must be registered.
  - Not-For-Profit Organizations that Apply Pesticides:
    - Not covered by Article 33 or Part 325. Should NFP's be required to register as Pesticide Businesses?
  - Allow for Agency Shared Services Agreements:
    - Set standards for acceptable Shared Services Agreements between municipalities for pesticide applications.

- **Update Commercial Permit Holder (Restricted Pesticide Dealer) Requirements**

Concern – The Department has to incorporate all of the mandatory requirements of the federal Certification of Pesticide Applicators rule to maintain its primacy enforcement authority.

- Federal Requirement – Recordkeeping requirements for Restricted Use Retail Dealers.
- Proposed changes to regulations:
  - Expand existing Commercial Permit recordkeeping requirements to include:
    - Name and address of certified applicator who purchased the Restricted Use Product (RUP)
    - Certification expiration date of certified applicator who purchased the RUP
    - Certification category relevant to RUP purchased

- **Consolidate Commercial Permit (Restricted Pesticide Dealer) Requirements**

Concern - Regulations for RUP sales are currently in multiple parts of the regulations. The Department needs to clarify Commercial Permit requirements.

- Proposed changes to the regulations:
  - Combine regulations for Commercial Permits and RUP sales into one new Part.
  - Refer to Commercial Permit Holders as Restricted Pesticide Dealers, to be consistent with other States.
  - Require commercial permit for e-sales/e-commerce internet sales of RUP's
  - Clarify sales and delivery of RUPs:
    - Who can purchase or possess RUPs.
    - RUP delivery requirements.

## **CONTACT INFORMATION**

### **Pesticide Business & Agency Registration**

### **Restricted Pesticides Dealers Commercial Permit Regulations**

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# PESTICIDE USE

## Fall 2020 Stakeholder Meeting

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The Pesticide Use portion of Part 325 will be rewritten as its own Part. In addition, the Department requests stakeholder input on the following proposals:

- **Incorporate the federal Certification of Pesticide Applicators Rule**

Concern - The Department must incorporate all of the mandatory requirements of the federal Certification of Pesticide Applicators rule to maintain its primary enforcement authority.

- Federal Requirement – Establish supervision requirements for commercial and private pesticide applicators
- Proposed changes to regulations:  
Indicate that supervising applicators must:
  - Ensure noncertified applicators under their supervision are qualified:
    - Be at least 18 (or at least 16 for immediate family member of the supervising private applicator)
    - Have the required annual training or satisfied worker protection standard (WPS) training requirements within the last 12 months.
    - Have instruction within the last 12 months about the safe operation of pesticide application equipment.
  - Ensure noncertified applicators under their supervision have:
    - A means for immediate communication with the supervising certified applicator.
- Federal Requirement – Establish additional recordkeeping requirements for certified commercial applicators.
- Proposed changes to the regulations:
  - Add to the commercial applicator record keeping requirements – the name and address of the person for whom the application is made, the size of treated area, time of application, name and certification number of certified applicator that made or supervised the application, and the name of noncertified applicator that made the application if applicable.

- **Definition of Terms**

Concern – Terms used in regulation need to be defined.

- Proposed definitions:
  - **Direct Observation**
    - the supervising certified pesticide applicator is physically present and interacting with the individual using the pesticide.
    - can speak directly with that individual in-person.
  - **Direct Supervision**
    - the supervising certified pesticide applicator and individual using the pesticide must be able to immediately communicate.
    - supervising certified pesticide applicator is able to be physically present with the individual using the pesticide within 30 minutes.
    - In the event immediate communication is not possible, the pesticide use must cease until immediate communication is again established or the supervisor is physically present with the applicator.
  - **Indirect Supervision**
    - the supervising certified pesticide applicator must ensure that the individual using the pesticide has a means to contact, and is able to contact, the supervising certified applicator within a reasonable time not to exceed 30 minutes

- an individual applying pesticides by aircraft maintains communication with the certified applicator.
    - In the event it is necessary to contact the supervising certified pesticide applicator to continue the pesticide use, the pesticide use must cease until contact is established.
  - **Physical address**
    - the identifying location, which may include house and building number, apartment number, street name, city, state, and zip code.
    - Large scale pesticide applications may include GPS coordinates.
  - **Mixing rate**
    - the ratio that the pesticide is combined with water or other carrier (diluent).
  - **Application rate**
    - the amount of mixed or unmixed pesticide applied per specific unit of area or volume.
- **Update Requirements for the Use of Pesticides**  
Concern – Pesticide use requirements need to be updated.
    - Proposed changes to the regulations:
      - All equipment containing pesticides and drawing water from any water source shall have an effective anti-siphon device to prevent backflow.
      - During pesticide use, an apprentice must possess on their person a copy of their training documentation.
      - During pesticide use, the certified commercial applicator, certified commercial technician, commercial pesticide apprentice, or certified private applicator must possess and have accessible at the site of application a written copy of the label for each pesticide being used.
  - **Revise Termite Regulations**  
Concern - Industry standards have changed since regulations were developed.
    - Proposed changes to the regulations:
      - Update the regulations to reflect the current practices.
  - **Update Cleaning and Disposal of Unwanted or Unusable Pesticides and Pesticide Containers**  
Requirement - The 2009 Federal Container & Containment (C&C) Rule requires that the cleaning and disposal instructions be contained on the pesticide label. Current regulations are outdated.

Concern – The current regulations are not consistent with approved methods disposal and need to be updated to reflect the C&C.

- Proposed changes to the regulations:
  - Pesticide container must be cleaned according to instructions on the label.
  - Containers without cleaning instructions must be cleaned with the triple rinse technique as defined in the current 325.1 definitions.
  - Ready to use pesticide containers must be drained for one 30 second period.
  - Pesticides and Pesticide containers must be disposed in accordance to label instructions and 6 NYCRR Part 360 or Part 370 requirements.
  - Burying and Burning of pesticides and pesticide containers is prohibited except at a permitted facility.
  - Pesticides and Pesticide containers that qualify as a hazardous material must be managed in accordance with 6 NYCRR Part 370 regulations.
  - Pesticide container may be recycled in accordance with label instructions and state and local regulations

- **Update pesticide storage requirements**  
Concern - The current regulations provide minimal detail pertaining to pesticide storage.
  - Proposed changes to the regulations:
    - Pesticides shall be stored according to label directions.
    - No person shall store any pesticide or pesticide container in such a manner as may be injurious to human, plant or animal life, or to property.
  
- **Develop Labeling Requirements for Alternative Containers**  
Concern - Current regulations lack any requirements regarding the proper labeling of pesticides that are not in the manufacturer's original container, referred to as alternative pesticide container in the law.
  - Proposed changes to the regulations:
    - Require the proper labeling of alternative pesticide containers.
  
- **Revise Supervision Requirements**  
Concern – Ensure supervision and communication requirements are adequate to provide oversight of the application.
  - Proposed changes to the regulations:
    - Supervision of Apprentices when Direct Observation, Direct Supervision, or Indirect Supervision is required.
    - Supervision of Technicians when Direct Observation, Direct Supervision, or Indirect Supervision is required.
    - Supervision of Handlers when Direct Observation, Direct Supervision, or Indirect Supervision is required.
    - Establish minimum standards for immediate voice communication.
  
- **Revise Recordkeeping and Reporting Requirements**  
Concern – Federal C&T and WPS changes require more information for commercial and private applicators.
  - For Commercial Applicators - Proposed changes to the current regulations in addition to C&T requirements:
    - Require Pesticide businesses and commercial applicators (this include certified applicators, technicians, and apprentices) to maintain true and accurate records prior to leaving the physical address of the pesticide application.
    - Recordkeeping information required will include:
      - physical address of the pesticide application;
      - total undiluted amount of each pesticide applied per location;
      - mixing rate; and
      - application rate.

This information must be recorded prior to leaving the physical address of the pesticide application, retained for a minimum of three years, and must be available for inspection upon request by the department.
  - For Private Applicators- Proposed changes to the current regulations:
    - Require certified private applicators to maintain true and accurate records of all restricted use pesticides upon completion of the pesticide application.
    - Recordkeeping information required shall include:
      - date and time application started and ended;
      - location by physical address and description of the treated area;
      - Active ingredient;
      - REI; and

- wind speed and direction.

This information must be recorded upon completion of the pesticide application, retained for a minimum of three years, and must be available for inspection upon request by the department.

- All certified commercial applicators and technicians must file annual reports with the Department's headquarters in Albany, NY, on or before February 1st of each year.
- **Allow Access to Application Records for Apprentices and Technicians**  
Concern – Apprentices and technicians can encounter difficulties in obtaining proof of their application experience for the Department's eligibility requirements.
  - Proposed changes to the regulations:
    - Upon request by the department, employers must provide records of pesticide applications made by technicians and apprentices for the duration of regulatory retention requirement.
- **Update Commercial Lawn Application Contracts and Visual Notification Requirements**  
Concern - The law regarding commercial lawn contracts was revised and the current regulations do not reflect those revisions.
  - Proposed changes to the current regulations:
    - Contracts must include the following items:
      - specify the approximate date or dates of application or applications; not to exceed to 21 days;
      - state the name of the property owner or owner's agent and the address of the premises to be treated; and
      - 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; or documentation of the contract payment by the owner or owner's agent;
    - Contract Amendments – must meet the following requirements:
      - An amendment to the date or dates specified, the alternate date or dates cannot exceed 21 days.
      - Acceptance of the amendments can be oral, written, or electronic.
      - The documentation of such acceptance may be either written or electronic and shall be maintained for the duration of the contract and three years after expiration of the contract.
    - Prior to the commercial lawn application, the following information must be supplied to the property owner or agent in either written, digital, or electronic format as determined by the property owner or agent.
      - a list of pesticides to be applied including brand names and generic names of active ingredients; and
      - any warnings that appear on the label(s) of pesticide(s) to be applied that are pertinent to the protection of humans, animals or the environment; and,
      - the name, address, telephone number, and pesticide business registration number of the pesticide business providing the commercial lawn application service and the pesticide applicator certification identification card number of the person employed by the pesticide business who will provide or supervise the commercial lawn application service.
    - The applicator must have a written copy of this information in his or her possession

Concern – Date and Time may not be provided on all Visual Notification Markers

- Proposed changes to the regulations:
  - Visual notification markers.
    - the specific date and time of the actual commercial lawn application.

Concern – Posting of visual notification marker distances and frequency may not reflect the intent of the law.

- Proposed changes to the regulations:
  - Every treated premises or treated area must be marked by at least one visual notification marker

- **Update Label Notification Requirements**

Concern – All businesses, other than those providing commercial lawn applications, are not allowed to provide amended labels to meet notification requirements.

- Proposed changes to the regulations:
  - Replace the term “amended label” with the term “abridged label.”
  - Allow the use of abridged labels for all applications rather than just for commercial lawn applications.

Concern – There are currently no regulations for community-wide pesticide application notification.

- Proposed changes to the regulations:
  - Incorporate community-wide notification requirements regarding adulticiding, larviciding, and other community wide activities as required in current procedures.

- **Incorporate The WPS**

Concern – Current regulations do not address the 2015 revisions to the federal Worker Protection Standard.

- Proposed changes to the regulations:
  - Incorporate into regulations.

## **CONTACT INFORMATION**

### **Pesticide Use Regulations**

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# MINIMUM RISK PESTICIDE PRODUCTS

## Fall 2020 Stakeholder Meeting

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The Department requests stakeholder input on a proposal to require registration of Minimum Risk Pesticide Products in New York State.

### Concerns:

- Minimum Risk Pesticide products specifically exempted for registration by EPA in 1996.
  - No central EPA oversight has led to confusion and non-compliant products.
  - Unfair to registrants of EPA registered products.
  - Products are still considered pesticides.
- Most states require registration.
  - Different label and registration requirements.
  - Confusing and cumbersome to registrants that want to comply.
- NYS does not register products but all other pesticide use and recordkeeping requirements apply.
  - Confusion regarding NYS requirements.
  - Users and potential users in the state are unsure of product compliance with EPA exemption criteria.
  - Commercial/professional applicators are hesitant to use Minimum Risk products due to uncertainty of compliance with exemption criteria.
  - Staff spend a lot of time reviewing labels for compliance.
- Fraudulent products pose a risk to public health and the environment.
  - Consumer protection concerns regarding unrealistic product claims.
  - Inappropriate and ineffective products labeled for control of pests of significant public health importance (for example mosquitoes, ticks and bed bugs).

### **Proposed changes to require the registration of Minimum Risk Pesticide products in New York**

- Registration would:
  - Provide oversight of products in the state.
  - Mitigate confusion and clarify requirements.
  - Ensure compliance with exemption criteria.
  - Ensure products are labeled with proper label statements and use directions.
  - Provide a database of compliant products.
  - Provide an online copy of NYS acceptable label.
  - Increase confidence in compliance.
  - Increase use of Minimum Risk Pesticide products.
- Registration would clarify that certain products should not be used.
  - Protect public health by ensuring public health products not registered for use.
  - Protect NYS water resources by ensuring products not labeled for aquatic use.

- Regulations in-line with other states and guidance developed by Association of American Pesticide Control Officials (AAPCO) 25(b) Workgroup. AAPCO is an organization of pesticide regulatory officials from states, U.S. territories, federal agencies and Canadian provinces who administer and enforce pesticide laws and regulations.

The following is from the AAPCO website (<https://aapco.org/2015/07/02/fifra-25b-workgroup>):

## **FIFRA Minimum Risk Pesticides – 25(b) Product Label Guidance**

Per FIFRA Section 25(b), EPA has exempted certain products from federal regulation. However, these products are subject to registration by individual states. States are not required to permit the sale of an exempted product simply because it is exempted under federal pesticide law. Each state may have different label requirements, which makes it difficult for companies to comply with all states. For this reason, the Association of American Pesticide Control Officials (AAPCO) created a 25(b) Workgroup. The following list is label guidance put together by the AAPCO 25(b) Workgroup to help companies comply with state requirements. This list is for guidance purposes and does not guarantee that your product will be accepted in all states.

### **25(b) Pesticide Product Labeling Expectations:**

1. Products must comply with the 6 conditions outlined by EPA.
  - a. Condition 1 – Active Ingredients
    - i. The product's active ingredients must only be those listed in 40 CFR 152.25(f)(1).
  - b. Condition 2 – Inert Ingredients
    - i. The product's inert ingredients must only be those listed in 40 CFR 152.25(f)(2) and 40 CFR 180.950(a), (b), (c), and (e).
  - c. Condition 3 – Ingredients Listed on Label
    - i. All ingredients in a 25(b) product must be listed by label display name on the label.
  - d. Condition 4 – Health-Related Claims
    - i. The label cannot state or imply that the product can or will control or reduce organisms that pose a threat to human health, or insects or rodents carrying specific diseases.
  - e. Condition 5 – Company Name & Contact Information
    - i. The name of the producer or the company for whom the product was produced and the company's contact information, which includes a street address or PO Box and telephone number, must be displayed prominently on the product label.
  - f. Condition 6 – Label Statements
    - i. The label cannot include any false or misleading statements, as described in 40 CFR 156.10(a)(5)(i) through (viii).
2. Signal Word and Keep Out of Reach of Children statement are to be located prominently on the front panel of the label.
  - a. The Signal Word on the label should equal what is on the Safety Data Sheet (SDS) as the safety requirements for commercial use products.
3. Both Active and Inert Ingredients are to be listed in column form and total 100%.
4. Inert ingredients are to be listed on the label in order of highest percentage first.
5. NO images of children are acceptable on labels unless the product is intended for use on children or is a swimming pool product.
6. All claims on the manufacturer's website must comply with the 6 conditions outlined by EPA.

7. Labels are to include specific use site locations.
8. Non-toxic claims are not acceptable.
9. The terms “Organic” or “Certified Organic” in reference to the 25(b) product are unacceptable.
  - a. The use of the USDA Organic logo is not acceptable on any labeling.
  - b. Individual ingredients in a 25(b) product may be listed as “grown organically”. Proper paperwork may be required to substantiate this claim.
  - c. The use of the term “organic” is acceptable when used in connection with one of the following statements: “For Use in Organic Production”, “For Use in Organic Gardening”, “For Use on Organic Turf” and “OMRI Listed”.
10. “Natural” claims are not allowed if the product includes synthetic chemicals and those derived synthetically.
  - a. Ingredients such as, but not limited to, sodium lauryl sulfate, isopropyl myristate, isopropyl alcohol, malic acid, potassium sorbate, citric acid, sodium benzoate, benzoic acid and xanthan gum are synthetic chemicals and are therefore not considered natural.
11. Claims such as “Safe” or “Safe around children and pets” are acceptable only when accompanied by the qualifier “...when used as directed”.
12. Data may be required to substantiate any claim that appears on the label or labeling.
13. Labeling of products should include an advisory statement when data does not meet efficacy data expectations.

Examples:

- The effectiveness of this product may not meet the level of protection required for EPA-registered pesticides.
- This product has not been shown to protect people from biting mosquitoes for at least 2 hours.
- Reduces or May reduce (name of pest).
- Suppresses or Aids in the suppression of (name of pest).

This list is to serve as guidance only. This document is a living document that may be updated at any time. For specific registration requirements, please contact the individual state regulatory agency responsible for pesticide registration.

## **CONTACT INFORMATION**

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# AQUATIC PESTICIDES

## Fall 2020 Stakeholder Meeting

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Aquatic Parts 327, 328 and 329 will be revised and combined. The Department requests stakeholder input on the following proposals:

- **Incorporate amendments to Article 15 of the Environmental Conservation Law**  
Concern – Current regulations are outdated (Last revised in 1973) and do not reflect the 1990 amendments to the relevant portions of Article 15 of the Environmental Conservation Law.
- Distinction between application of “pesticides” and “chemicals” made
  - Application of “chemicals” handled by our Division of Water
  - Application of “pesticides” handled by Division of Materials Management; Bureau of Pesticides Management.
- The Department is authorized to adopt regulations that may forbid the direct application or use of pesticides except pursuant to a permit and identify when a permit is required.
- **Proposed changes to the regulations:**
  - Combine all aquatic regulations (Parts 327, 328 and 329) into one Part which will streamline requirements and eliminate discrepancies between Parts
  - Clarify that permit jurisdiction is over the application of pesticides for the control of all pests in surface waters.
  - Specify Article 15 Permit exemptions. The following are proposed Article 15 exemptions:
    - The application of pesticides for the control of aquatic pests in ponds, having no outlet to other surface waters which lie wholly within the boundaries of lands privately owned or leased by the person making or authorizing such application of pesticides:
      - Ponds one acre or less in size will be eligible for a purchase permit and can be treated by the property owner.
      - Ponds over an acre in size must be treated by a certified applicator.
    - The application of pesticides to control bacteria or algae by or on behalf of a duly constituted water supply agency to water supply waters. These waterbodies must lie wholly within the boundaries of lands owned or leased by the water supply agency and have no outlet to other surface waters. These applications are subject to certification requirements.
    - The application of pesticides to control fish by or on behalf of the Department of Environmental Conservation to water completely enclosed by or bordered by lands owned or leased by the Department or State. These applications are subject to certification and visual notification marker requirements.
    - The application of aquatic microbial pesticides which have no water use restrictions, for the purpose of controlling black flies or mosquitos. These applications must be conducted by or on behalf of a federal, state, or local government agency. These applications are subject to certification requirements.
    - The application of pesticides above surface waters where no pesticide enters surface waters.
- **Notification vs Consent**  
Concern - Article 15 of the Environmental Conservation Law provides for giving reasonable notice to persons likely to be **adversely affected** and requires consent from those who may reasonably be expected to **suffer substantial harm or injury**. These terms need to be defined.

- **Proposed definitions:**

**Adversely affected** means a condition whereby a riparian owner is subject to restrictions on the use of surface waters resulting from the application of pesticides.

**Substantial damage or injury** means any damage or injury that would be caused from restrictions on the use of the treated water for potable, domestic, livestock watering or irrigation purposes.

- **Incorporate existing aquatic permit application requirements**

Concern – Current Department aquatic permit application policies are not reflected in the regulations.

- Proposed changes to the regulations:

- Update regulation to reflect current accepted practices
- Update the process of notifying riparian owners
- List permit application requirements

- **Remove lists of authorized chemicals and specifications**

Concern – The lists of chemicals and specifications contained in the regulations are outdated.

- Proposed changes to the regulations:

- Update regulations to remove specific references
- Remove the lists of outdated authorized pesticides and use restrictions
- Refer to the existing New York State registered pesticide label as the primary source for determining pesticide use and restriction requirements.

## **CONTACT INFORMATION**

### **Aquatic Pesticide Regulations**

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