Bureau of Pesticides Management: 320 Series Rulemaking

Stakeholder Meeting
2019

FOR INFORMATIONAL PURPOSES ONLY, NOT A FINAL PROPOSAL
Revising Part 320 Series Regulations

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Part 320 Series Regulations

• Restructure and Clarify Current Regulations
• Update Regulations to Reflect Current Business Practices and Application Methods
• Registration of Minimum Risk Pesticide Products
• Incorporate the Requirements of the:
  ▪ Federal Certification of Pesticide Applicators Rule (Referred to as the Federal C & T Rule)
  ▪ Federal Worker Protection Standard (WPS)
  ▪ Federal Container & Containment (C&C) Rule
Federal Certification & Training Rule

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Certification & Training

Mandatory Requirements of the Federal C & T Rule

- DEC will Submit the State Certification & Training Plan to EPA by March 6, 2020

- EPA’s Deadline to Approve the State’s Plan is March 6, 2022
  - The Approval will Include an Implementation Timeframe Agreed to by EPA and DEC

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Certification & Training

Mandatory Requirements of the Federal C & T Rule

• **Requirement**: Minimum Age of 18 for All Certified Applicators and Noncertified Applicators

**Proposed Changes:**

- Establish a Minimum Age of 18 for:
  - Private Applicators
  - Commercial Applicators
  - Technicians
- Maintain the Minimum Age of 16 for Apprentices
  - Prohibit Apprentices from Handling Restricted Use Pesticides (RUPs) Until The Age of 18

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Certification & Training

Mandatory Requirements of the Federal C & T Rule

• **Requirement:** Certification Categories for Aerial Application, Soil Fumigation, and Non-Soil Fumigation

**Proposed Changes:**
- Add a Soil/Non-Soil Fumigation to Both Commercial and Private Certification Categories
- Develop a Separate Aerial Category for Private Certification

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Certification & Training

Mandatory Requirements of the Federal C & T Rule

• **Requirement:** Annual Training for Noncertified Applicators*
  (*EPA Guidance states Apprentices and Certified Technicians are Considered Noncertified Applicators*)

**Proposed Changes:**

- Technicians Take Core Training Each Year During a 3 Year Certification Cycle
- Apprentices Take Department Approved Course Annually

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Certification & Training

Mandatory Requirements of the Federal C & T Rule

- **Requirement**: Recordkeeping Requirements for Annual Noncertified Applicator Training

  **Proposed Changes:**
  - Add the Apprentice Annual Training Records Requirement to the Current Apprentice Training Records Requirements
  - Add Annual Records Requirement for Certified Technician Training

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Certification & Training

Mandatory Requirements of the Federal C & T Rule

• Requirement: Eliminate Non-Reader Certification for Private Applicators

Proposed Change:
  ▪ Eliminate Special Permits
Certification & Training

Mandatory Requirements of the Federal C & T Rule

- **Requirement**: Use of Only Materials Approved by the State Certifying Authority to be Provided and Collected by the Proctor at the Certification Examinations

  **Proposed Change:**
  - Initiate Closed Book Category Exams

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Certification & Training

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Certification & Training

Pesticide Certification Categories:

- **Concern:** Numerous Categories Make it Difficult to Qualify and Obtain Recertification Credits and Some Categories Overlap in Methods, Sites or Uses

**Proposed Changes:**

- Renumber Categories and Remove “Subcategory” Language
- Redefine Categories to Include Policy Documents and Enforcement Discretion Memoranda
- Combine Similar Categories

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Certification & Training

Private Pesticide Certification Categories:

Currently 7 Private Categories/Subcategories:
   Field & Forage; Fruit; Vegetable; Greenhouse & Florist;
   Nursery, Ornamentals & Turf; Ag Animal; and Aquatic

• Streamline by Combining into One General “Agricultural” Category
• Create New Specific Fumigation and Aerial Categories
  ▪ Required by New Federal C & T Rule

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Certification & Training

Commercial Pesticide Certification Categories:
Currently 28 Commercial Categories/Subcategories
• Streamline by Combining Similar Categories

For Example Combine:
- 1B Agricultural Animal
- 1C Companion Animal

Into New Category:
- Agricultural & Companion Animal

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Commercial Pesticide Certification Categories:

For Example Combine:

- 2  Forest
- 3A Ornamentals, Shade Trees & Turf
- 3B Turf
- 3C Interior Plant Maintenance
- 6A Right-of-Way Vegetation Control

Into New Category:

- Vegetation Management

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Commercial Pesticide Certification Categories:

For Example Combine:
• 5A Aquatic Plant
• 5B Aquatic Insect & Misc. Organism
• 5C Aquatic Fish

Into New Category:
• Aquatic Pest Control

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Commercial Pesticide Certification Categories:

For Example Combine:
• 6B Right of Way In Place Pole
• 7D Lumber & Wood Products

Into New Category:
• Wood Preservation

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Commercial Pesticide Certification Categories:

For Example Combine:

- 7A Structural & Rodent
- 7F Food Processing

Into New Category:

- Structural Pest Control

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Certification & Training

Mold Remediation - Future Regulation?

• **Concern:** Lack of Oversight of Mold Remediation Businesses and Pesticide Products Used in Mold Abatement

  **Proposed Change:**
  
  ▪ Require Pesticide Certification of Mold Remediation Applicators

  ▪ New Category of Pesticide Certification?
    ▪ Mold Control & RUP Antimicrobial

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Certification & Training

Eligibility:

• **Concern:** 30 Hours of Eligibility Training is Too Much for Some Categories and Not Enough for Other Categories

**Proposed Changes:**

- Update Certification Eligibility (aka 30 Hour) Course Requirements so its Elements Reflect the Complexity of the Particular Category
- Establish a Core Training Standard

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Certification & Training

Eligibility:

- **Concern**: 30 Hours of Eligibility Training is Too Much for Some Categories and Not Enough for Other Categories

**Example (1A)**: 18 Hours Core Training
+ 8 Hours Category Specific Training
26 Hours Eligibility Course Requirement

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Certification & Training

Recertification:

• Concern: Applicators Taking Category Specific Training Only May Not Receive Updated Safety or Regulatory Information

Proposed Change:

- Develop a Core Recertification Credit Requirement
Certification & Training

Recertification:

- **Concern:** Continuing Education Should Not Be Considered a Penalty

  **Proposed Changes:**
  - Eliminate Penalty Credits
  - Revise Expiration Deadlines for Recertification
  - Simplify the Process for Reinstatement
  - Possibly Require Examination Instead of Credits

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Certification & Training

Supervision:

• **Concern**: Inadequate Supervision of Some Apprentices

**Proposed Change:**

- Limit the Number of Apprentices Supervised by a Certified Applicator

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Certification & Training

Supervision:

- **Concern:** Apprentice Training Records Difficult to Obtain

**Proposed Changes:**

- Training Records Must Be Maintained Throughout Employment AND a Minimum of 3 Years After Employment Ends

- Require Employer to Provide Records Upon Request

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Certification & Training

Course Sponsors and Instructors:

• Concern: Pesticide Training Course Procedures Not Currently Outlined in Regulations

  Proposed Changes:
  ▪ Incorporate Existing Course Procedures
  ▪ Clarify Acceptable Course Instructor Credentials
Questions or Comments?

Submit Written Comments for Pesticide Certification & Training Regulations to:

pestregs@dec.ny.gov
Business & Agency Registration

FOR INFORMATIONAL PURPOSES ONLY, NOT A FINAL PROPOSAL
Businesses:

• Concern: Existing Regulations Need Clarification and Updating to Include Department Procedures and Current Business Practices

  Proposed Changes:
  ▪ Specify Businesses and Locations that Must Register
Business & Agency Registration

Businesses:

- **Concern**: Existing Regulations Need Clarification and Updating to Include Department Procedures and Current Business Practices

  **Proposed Changes:**
  - Add Language to Allow Subcontracting
Business & Agency Registration

Businesses:

• **Concern:** Existing Regulations Need Clarification and Updating to Include Department Procedures and Current Business Practices

  **Proposed Changes:**
  - Update Insurance Requirements
Business & Agency Registration

Businesses:

• Concern: Existing Regulations Need Clarification and Updating to Include Department Procedures and Current Business Practices

  Proposed Changes:
  ▪ Clarify Business Requirements and Restrictions for Employees and Supervising Applicators

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Business & Agency Registration

Businesses:

• **Concern:** Existing Regulations Need Clarification and Updating to Include Department Procedures and Current Business Practices

  **Proposed Changes:**
  - Allow Certified Technicians to Register a Business in Most Categories of Certification
Business & Agency Registration

Businesses:

- **Concern**: Existing Regulations Need Clarification and Updating to Include Department Procedures and Current Business Practices

  **Proposed Changes**:
  - Modify Vehicle and Equipment Identification Requirements

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Business & Agency Registration

Agencies:

• **Concern:** Existing Regulations Need Updating, Clarification, and a Provision for Agency Shared Service Agreements

*Proposed Changes:*

- Specify Agencies and Locations that Must Register
- Registration of Not-For-Profit Organizations that Apply Pesticides
- Allow for Agency Shared Services Agreements

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Questions?

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Questions or Comments?

Submit Written Comments for Pesticide Business or Agency Registration Regulations to:

pestregs@dec.ny.gov
Commercial Permits

Restricted Pesticide Dealers and Distributors

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Commercial Permits
Restricted Pesticide Dealers and Distributors

Mandatory Requirements of the Federal C & T Rule

• Requirement: Recordkeeping Requirements for Restricted Use Retail Dealers

Proposed Changes:

 Expand Existing Commercial Permit Recordkeeping Requirements to Include:
  ➢ Name and Address of Certified Applicator who Purchased the Restricted Use Pesticide (RUP)
Commercial Permits
Restricted Pesticide Dealers and Distributors

Mandatory Requirements of the Federal C & T Rule
• Requirement: Recordkeeping Requirements for Restricted Use Retail Dealers

Proposed Changes:
  ▪ Expand Existing Commercial Permit Recordkeeping Requirements to Include:
    ➢ Certification Expiration Date of Certified Applicator who Purchased the RUP

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Commercial Permits
Restricted Pesticide Dealers and Distributors

Mandatory Requirements of the Federal C & T Rule
• Requirement: Recordkeeping Requirements for Restricted Use Retail Dealers

Proposed Changes:
  ▪ Expand Existing Commercial Permit Recordkeeping Requirements to Include:
    ➢ Certification Category Relevant to RUP Purchased

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Commercial Permits
Restricted Pesticide Dealers and Distributors

• **Concern:** Existing Regulations for RUP Sales are in Multiple Parts and Need Clarification

  **Proposed Changes:**
  - Combine Regulations for Commercial Permits and RUP Sales into One New Part

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Commercial Permits
Restricted Pesticide Dealers and Distributors

- **Concern**: Existing Regulations for RUP Sales are in Multiple Parts and Need Clarification

**Proposed Changes:**
- Refer to Commercial Permit Holders as Restricted Pesticide Dealers
Commercial Permits
Restricted Pesticide Dealers and Distributors

- **Concern**: Existing Regulations for RUP Sales are in Multiple Parts and Need Clarification

  **Proposed Changes:**
  - Require Commercial Permit for E-Sales/ E-Commerce (Internet Sales) of RUPs

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Commercial Permits
Restricted Pesticide Dealers and Distributors

• **Concern:** Existing Regulations for RUP Sales are in Multiple Parts and Need Clarification

Proposed Changes:

- Clarify Sales and Delivery of RUPs:
  - Who can Purchase or Possess
  - Delivery Requirements

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Questions?

FOR INFORMATIONAL PURPOSES ONLY, NOT A FINAL PROPOSAL
Questions or Comments?

Submit Written Comments for Commercial Permit Pesticide Regulations to:

pestregs@dec.ny.gov
Pesticide Use

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Pesticide Use

Mandatory Requirements of the Federal C & T Rule

• **Requirement:**
  Establish Supervision Requirements for Certified Commercial and Private Pesticide Applicators

• **Proposed Changes:**
  ▪ Require Supervising Applicators to:
    - Ensure Noncertified Applicators Under Their Supervision are Qualified
    - Minimum Age of 18 (16 for Immediate Family Member of Supervising Private Applicator)

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Pesticide Use

Mandatory Requirements of the Federal C & T Rule

• Requirement:
  Establish Supervision Requirements for Certified Commercial and Private Pesticide Applicators

• Proposed Changes:
  ▪ Require Supervising Applicators to:
    ➢ Have Met the Applicable Training Requirements
    ➢ Been Instructed in the Previous 12 Months on the Safe Operation of Pesticide Application Equipment

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Pesticide Use

Mandatory Requirements of the Federal C & T Rule

• **Requirement:**
  Establish Supervision Requirements for Certified Commercial and Private Pesticide Applicators

• **Proposed Changes:**
  - Require Supervising Applicators to:
    - Ensure Noncertified Applicators Under Their Supervision Have a Means for Immediate Communication With the Certified Supervising Applicator

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Pesticide Use

Mandatory Requirements of the Federal C & T Rule

• **Requirement:**
  Establish Additional Recordkeeping Requirements for Certified Commercial Applicators

• **Proposed Changes:**
  - Expand the Existing Commercial Applicator Recordkeeping Requirements to Include:
    - Name and Address of the Person for Whom the Application is Made
    - Size of Treated Area
    - Time of Application

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Pesticide Use

Mandatory Requirements of the Federal C & T Rule

• Requirement:
  Establish Additional Recordkeeping Requirements for Certified Commercial Applicators

• Proposed Changes:
  ▪ Expand the Existing Commercial Applicator Recordkeeping Requirements to Include:
    ➢ Name and Certification Number of Applicator that Made or Supervised the Application
    ➢ Name of Noncertified Applicator that Made the Application if applicable

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Pesticide Use

Termite Regulations

• **Concern:**
  Industry Standards for Termite Control Have Changed

• **Proposed Change:**
  - Update Termite Regulations to Reflect Current Practices

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Pesticide Use

Storage:

• **Concern:**
  Minimal Detail Pertaining to Pesticide Storage

• **Proposed Change:**
  - Direct Users to Follow Requirements on the Pesticide Label
  - Provide More Detailed Requirements for Pesticide Storage Beyond the Label

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Pesticide Use

Alternative Containers:

• **Concern:**
  Lack of Requirements for Proper Labeling of Pesticides that are Not in the Manufacturer’s Original Container (Referred to as Alternative Pesticide Containers in the Law)

• **Proposed Change:**
  ▪ Require the Proper Labeling of Alternative Pesticide Containers

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Pesticide Use

Requirements of the 2009 Federal Container & Containment (C&C) Rule

- Requirement:
  Pesticide Labels Must Include Container Cleaning Instructions

- Proposed Change:
  - Remove Container Cleaning Language from Regulations and Refer to Product Label Requirements
Pesticide Use

Requirements of the 2009 Federal Container & Containment (C&C) Rule

• **Requirement:**
  Pesticide Product Labels Must Contain Container Disposal Instructions

• **Proposed Changes:**
  - Update Pesticide Container Disposal Requirements to Refer to:
    - Product Label
    - Requirement to follow State and Local Solid Waste, Hazardous Wastes, and Recycling Rules

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Pesticide Use

Commercial Lawn Applications Contracts:

• Concern:
  Current Regulations Do Not Reflect Revisions in the Law

• Proposed Change:
  ▪ Clarify the:
    ➢ Contents of the Contracts
    ➢ Items to be Supplied Prior to the Application
  ▪ Update to be Consistent with Existing Program Policy, Statute, and Current Electronic Business Practices
Pesticide Use

Visual Notification:

- **Concern:**
  Date and Time May Not Be Provided on Visual Notification Markers

- **Proposed Change:**
  - Require Date and Time of Application on **All** Visual Notification Markers
Pesticide Use

Visual Notification:

• **Concern:**
  Posting of Visual Notification Marker Distances and Frequency May Not Reflect the Intent of the Law

• **Proposed Change:**
  - Reduce the Number of Visual Notification Markers or Reconfigure the Posting requirements

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Pesticide Use

Visual Notification:

- **Concern:**
  Pesticide Applicator or Business/Agency Information not Required on Visual Notification Markers

- **Proposed Change:**
  - Require Applicator or Business/Agency Information on Visual Notification Markers

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Pesticide Use

Label Notification:

• **Concern:**
  Not All Businesses Are Able to Provide Amended Labels

• **Proposed Change:**
  ▪ Replace “Amended Label” with “Abridged Label”
  ▪ Update Label Notification Requirements to Incorporate Abridged Label Allowances for All Applications

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Pesticide Use

Label Notification:

- **Concern:**
  Community-Wide Pesticide Application Notifications are Not Currently in Regulations

- **Proposed Change:**
  - Update Label Notification Requirements to Incorporate Existing Community-Wide Notification Procedures
Pesticide Use

Supervision:

• **Concern:**
  Ensuring that On-Site Direct Supervision and Communication Requirements are Adequate to Provide Oversight of the Pesticide Application

• **Proposed Change:**
  - Establish Minimum Standards for Immediate Voice Communication
  - Revise Requirements for On-Site and Off-Site Direct Supervision
  - Require Apprentice Documentation in Possession During Applications

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Pesticide Use

Incorporate The Worker Protection Standard (WPS):

- **Concern:**
  
  Current Regulations do not Address 2015 Revisions to The Federal WPS

- **Proposed Change:**
  
  - Incorporate WPS Requirements into Regulations
Pesticide Use

Private Applicator Records:

• **Concern:**
  Private Applicator Recordkeeping Requirements Do Not Fully Describe the Application of Pesticides

• **Proposed Change:**
  ▪ Update Recordkeeping Requirements to Fully Describe the Pesticide Application and meet WPS Requirements

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Pesticide Use

Anti-Siphon Device

• **Concern:**
  Anti-Siphon Device Policy is Not in Regulation

• **Proposed Changes:**
  - Amend Requirements for Anti-Siphon Device
  - Define “Water Source”

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Pesticide Use

Access to Application Records for Apprentices and Technicians

• **Concern:**
  Records Regarding Application Experience Proving Eligibility Can Be Difficult to Obtain

• **Proposed Change:**
  - Upon Request by the Department, Employers Must Provide Records of Pesticide Applications Completed by Technicians and Apprentices for the Duration of the Regulatory Retention Requirement
Questions?

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Questions or Comments?

Submit Written Comments for Pesticide Use Regulations to:

pestregs@dec.ny.gov

FOR INFORMATIONAL PURPOSES ONLY, NOT A FINAL PROPOSAL
Minimum Risk Pesticide Products

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Minimum Risk Pesticides

Concerns:

- Minimum Risk Pesticide Products Specifically Exempted for Registration by EPA in 1996
  - No Oversight from EPA has Lead to Confusion and Non-Compliant Products
  - Unfair to Registrants of EPA Registered Products
  - Products are Still Considered Pesticides

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Minimum Risk Pesticides

**Concerns:**
- Most States Require Registration
  - Different Label and Registration Requirements
  - Confusing and Cumbersome to Registrants

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Minimum Risk Pesticides

Concerns:

• 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 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

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Minimum Risk Pesticides

Concerns:

• 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 (Example: Mosquitoes, Ticks, Bed Bugs)
Minimum Risk Pesticides

Proposed Changes:

- Require Registration in NYS Which Would:
  - Provide Oversight of Products in the State
  - Mitigate Confusion and Clarify Requirements
  - Ensure Compliance with Exemption Criteria
  - 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

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Minimum Risk Pesticides

Proposed Changes:

- NYS Registration Would Clarify That Certain Products Should Not Be Used
  - Protect Public Health by Ensuring Products with Public Health Claims are Not Registered for Use
  - Ensure Products Are Not Labeled for Aquatic Use
Minimum Risk Pesticides

Proposed Changes:
• Revise Regulations to be In-Line with:
  ▪ Other States
  ▪ Guidance developed by Association of American Pesticide Control Officials (AAPCO) 25(b) Workgroup
Minimum Risk Pesticides

AAPCO 25(b) Workgroup Label Guidance:

• Products Must Comply with 6 Conditions Outlined by EPA

• Signal Word and Keep Out of Reach of Children Statement to be Located Prominently on the Front Panel of the Label

• Both Active and Inert Ingredients are to be Listed in Column Form and Total 100%

• Inert Ingredients are to be Listed on the Label In Order of Highest Percentage First

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Minimum Risk Pesticides

AAPCO 25(b) Workgroup Label Guidance:

• NO Images of Children are Acceptable on Labels Unless the Product is Intended for Use on Children

• All Claims on the Manufacturer’s Website Must Comply with 6 Conditions Outlined by EPA

• Labels to Include Specific Use Site Locations

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Minimum Risk Pesticides

AAPCO 25(b) Workgroup Label Guidance:

- Non-Toxic Claims are Not Acceptable. The Terms “Organic” or “Certified Organic” in Reference to the 25(b) Product are Unacceptable

- “Natural” Claims Not Allowed if Product Includes Synthetic Chemicals or Those Derived Synthetically

- Claims such as “Safe” or “Safe Around Children and Pets” are Acceptable Only When Accompanied by the Qualifier “…When Used as Directed”

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Minimum Risk Pesticides

AAPCO 25(b) Workgroup Label Guidance:

- Data May be Required to Substantiate Any Claim That Appears on the Label or Labeling
  - Department Does Not Intend to Require Efficacy Data to be Submitted with All Products
Questions?

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Questions or Comments?

Submit Written Comments for Minimum Risk or Part 326 Pesticide Regulations to:

pestregs@dec.ny.gov
Aquatic Pesticides

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Aquatic Pesticides

• **Concern:** Current Regulations are Outdated and Do Not Reflect the 1990 Amendments to Article 15 of the ECL
  - Permit Required for Application of a Pesticide to Surface Waters of the State
  - Distinction Between Application of “Pesticides” and “Chemicals”
  - Eliminated References to Specific Pests
  - Affirmed Department’s Aquatic Pesticide Application Permit Authority
Aquatic Pesticides

- **Proposed Change:**
  - Combine All Aquatic Regulations (Parts 327, 328, 329) Into One Part
    - Streamline and Eliminate Discrepancies
  - Remove References to Specific Pests
  - Clarify “Direct Application of Pesticides to or in Surface Waters”
  - Specify Current Permit Exemptions
    - One Acre or Less in Size Which Has No Outlet To Surface Water
    - Copper Sulfate Use by Water Supply Agencies

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Aquatic Pesticides

• **Concern:** Administrative Practices and Policies Not Contained in Regulations

  **Proposed Change:**
  - Update Regulations to Reflect Current Accepted Practices
  - Update the Process of Notifying Riparian Owners
    - Regulatory definition of persons “likely to be adversely affected”
Aquatic Pesticides

- **Concern:** Lists of Authorized Chemicals and Specifications are Outdated

  **Proposed Change:**
  - Update Regulations to Remove Specific References
  - Remove Outdated Lists
  - Refer to Label as Primary Source for Use and Restrictions
  - Maintain Some Restrictions?
    - Swimming

FOR INFORMATIONAL PURPOSES ONLY, NOT A FINAL PROPOSAL
Questions?

FOR INFORMATIONAL PURPOSES ONLY, NOT A FINAL PROPOSAL
Questions or Comments?

Submit Written Comments for Aquatic Pesticide Regulations to:

AQpestregs@dec.ny.gov
Thank You!

Bureau of Pesticides Management
625 Broadway
Albany, NY 12233-7254
(518) 402-8788

Webpage: http://www.dec.ny.gov/chemical/298.html

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