

Section 325.1 Definitions.

(a) **Abutting property** means contiguous real property not separated by a publicly owned road or highway which has a boundary or boundary point in common with property on which a commercial lawn application is made.

(b) **Accident** means an unexpected, undesirable event, caused by the use or presence of a pesticide, that adversely affects humans or the environment.

(c) **Agency** means any state agency; municipal corporation; school district recognized by the Commissioner of Education; public authority; college, as that term is defined in the education law; railroad, as that term is defined in the railroad law; or telegraph, telephone, telegraph and telephone, pipeline, gas, electric, or gas and electric corporation as those terms are defined in the transportation corporations law, which applies pesticides.

(d) **Agricultural animal** means any animal that is raised to produce food, clothing or other saleable commodity, along with large farm animals, including but not limited to, horses, mules and oxen.

(e) **Agricultural commodity** means any plant or part thereof, or animal, or animal product, produced by an individual (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable individuals) primarily for sale, consumption, propagation or other use by humans or animals.

(f) **Aircraft** means any contrivance now known or hereafter invented, used or designed for navigation of, or flight in, the air.

(g) **Antimicrobial agents** shall mean:

(1) disinfectants intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects;

(2) sanitizers intended to reduce the number of living bacteria or viable virus particles on inanimate surfaces, in water, or in air;

(3) bacteriostats intended to inhibit the growth of bacteria in the presence of moisture;

(4) sterilizers intended to destroy viruses and all living bacteria, fungi and their spores, on inanimate surfaces;

(5) fungicides and fungistats intended to inhibit the growth of, or destroy, fungi (including yeasts), pathogenic to humans or other animals on inanimate surfaces; and

(6) commodity preservatives and protectants intended to inhibit the growth of, or destroy bacteria in or on raw materials (such as adhesives and plastics) used in manufacturing, or manufactured

products (such as fuel, textiles, lubricants, and paints), but not those utilized in the pulp and paper process or cooling towers.

(h) **Anti-siphoning device** means the use of a backflow prevention device that uses a reduced pressure zone device or an air gap separation between a water source and the overflow of a receptacle (i.e., spray tank, mixing tank, dipping vat, etc.) containing pesticides, to prevent contaminated water from siphoning back into a water supply.

(i) **Application of pesticides** means the placement for effect of a pesticide at or on the location where pest control is desired.

(j) **Basement** means the area below the main floor of a structure that is five feet (5') or greater in height, as measured from the floor to the underside of floor joists, and is contained either wholly or in part by a foundation.

(k) **Certification** means the recognition by the department that the individual has demonstrated competency and is therefore authorized to use or supervise the use of pesticides or sell restricted use pesticides.

(l) **Certified pesticide applicator** means a commercial or private pesticide applicator who is certified by the department to use, supervise the use of, or train another individual in the use of any pesticide in any category of use covered by the individual's certification or any individual who is certified to sell restricted use pesticides as described in subdivision 325.16(l).

(m) **Certified commercial pesticide applicator** means a certified applicator who is certified by the department to use or supervise the use of any commercial application of pesticides or to sell or supervise the sale of a restricted use pesticide as described in subdivision 325.16(l).

(n) **Certified commercial pesticide technician** means an individual who is at least 17 years of age and is certified to engage in the following:

(1) commercial use of any general use or unclassified pesticide without supervision; or

(2) use of any pesticide when working under the direct supervision of a certified commercial pesticide applicator.

(o) **Certified private pesticide applicator** means a certified applicator who is at least 17 years old and uses or supervises the private application of restricted use pesticides for purposes of producing any agricultural commodity.

(p) **Chemigation** means the application of a chemical via an irrigation system by introducing or injecting the chemical into the water flowing through the system.

(q) **Cistern** means a reservoir used for the collection and storage of water, and constructed either wholly or partially underground, including those constructed in a manner that shares part of the foundation in its construction. A stone-filled well with a capacity of less than 60 gallons or a septic or sewerage system is not considered a cistern for the purpose of this Part.

(r) **Commercial application of pesticides** means any application of any pesticide except as defined in "private" or "residential" application of pesticides.

(s) **Commercial lawn application** means the application of pesticide to ground, trees, or shrubs on public or private outdoor property. The following pesticide applications are not 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 pursuant to subdivisions 325.40(f), (g) and (h) 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.

(t) **Commercial pesticide apprentice** means an individual who has met the requirements enumerated in section 325.10, is at least 16 years of age, and is working under the direct supervision of a certified commercial pesticide applicator.

(u) **Commissioner** means the Commissioner of the Department of Environmental Conservation or a designated agent.

(v) **Companion animal** means those animals that are not associated with agriculture and are kept as pets, including but not limited to, dogs, cats, fish, reptiles, amphibians and birds.

(w) **Competent** means properly qualified to perform functions associated with pesticide use.

(x) **Contamination** means the presence of a pesticide or pesticides, in or on areas other than the target area, in quantities which are or may be injurious to humans or the environment.

(y) **Crawl space** means the area below the main floor of a structure that is less than five feet (5') in height, as measured from the floor to the underside of the floor joists, and is contained either wholly or in part by a foundation.

(z) **Department** means the Department of Environmental Conservation.

(aa) **Dwelling** means any building or structure or portion thereof which is occupied in whole or in part as a home, residence or sleeping place for one or two families.

(ab) **Emergency pesticide application** means an unanticipated non-routine application of a pesticide made in response to an imminent threat to human health or property that requires immediate application.

(ac) **Environment** means water, air, land and all plants and humans and other animals living therein, and the inter-relationships which exist among them.

(ad) **Excavation/treated backfill technique** means application of termiticide in the following manner:

(1) trench and remove soil to be treated onto heavy plastic sheeting or similar material, or into a wheelbarrow or other device which prevents introduction of termiticide to the environment;

(2) treat excavated soil according to label directions. Mix termiticide dilution thoroughly into the soil in such a manner that termiticide runoff or spillage does not occur; and

(3) after treated soil has completely absorbed the termiticide dilution, replace treated soil in the trench.

(ae) **Footing** means a masonry support that underlies a foundation

(af) **Forest** means a concentration of trees and related vegetation, with tree crowns usually interlocking, in non-urban areas sparsely inhabited by and infrequently used by humans; characterized by natural terrain and drainage patterns.

(ag) **Foundation** means a wall, slab, post, pier, column or pillar that supports a structure.

(ah) **Fumigant** means any pesticide product that is a vapor or gas, or forms a vapor or gas on application, and whose pesticidal action is through the gaseous state.

(ai) **General use pesticide** means a pesticide which does not meet the state criteria for a restricted pesticide as established under authority of section 33-0303 of Article 33 of the New York State Environmental Conservation Law.

(aj) **Ground equipment** means any machine or device (other than aircraft) for use on land or water, designed for, or adaptable to use in applying a pesticide as a spray, dust, aerosol, or in any other form.

(ak) **Hazard** means a probability that a given pesticide will have an adverse effect on the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

(al) **Integrated Pest Management (IPM)** means a systematic approach to managing pests which focuses on long-term prevention or suppression with minimal impact on human health, the environment

and nontarget organisms. IPM incorporates all reasonable measures to prevent pest problems by properly identifying pests, monitoring population dynamics, and utilizing cultural, physical, biological or chemical pest population control methods to reduce pests to acceptable levels.

(am) **Label** means the written, printed or graphic matter on or attached to the pesticide, its immediate container and any outside containers or wrappers.

(an) **Labeling** means all labels and other written, printed, or graphic matter:

(1) upon the pesticide or any of its containers or wrappers;

(2) accompanying the pesticide at any time;

(3) to which reference is made on the label or in literature accompanying the pesticide, except when accurate, non-misleading reference is made to current official publications of the United States Departments of Agriculture or Interior, the United States Public Health Service, state agricultural experiment stations, state colleges of agriculture, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(ao) **Metabolite** means any substance produced in or by living organisms by biological processes and derived from a pesticide.

(ap) **Microbial pesticide** means any pesticide that is classified by the United States Environmental Protection Agency as a microbial pesticide and whose active ingredients consist of living microbial entities capable of survival, growth, reproduction and infection (i.e., bacteria, fungi, viruses and protozoans).

(aq) **Multiple dwelling** means any dwelling which is to be occupied by or is occupied as a residence or home of three or more families living independently of each other.

(ar) **Nontarget organism** means a plant or animal other than the one the pesticide is meant to control.

(as) **Ornamental** means trees, shrubs, and other plantings, grown primarily for beauty in and around habitations, generally, but not necessarily located in urban and suburban areas, including residences, parks, streets, retail outlets, industrial and institutional buildings.

(at) **Persistence** means that the pesticide or its metabolite remains at or near the point of application for more than one year.

(au) **Person** means any individual, public or private corporation, political subdivision, government agency, department or bureau of the State, municipality, industry, copartnership, association, firm, trust, estate or any other legal entity whatsoever.

(av) **Personal protective equipment** means apparel and devices worn to protect the body from contact with pesticides or pesticide

residues, including: coveralls, chemical-resistant suits, gloves, footwear, aprons and headgear, protective eyewear, and respirators.

(aw) **Pesticide** means: (1) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living humans /or other animals, which the department shall declare to be a pest; and (2) any substance or mixture of substances intended as a plant regulator, defoliant or desiccant.

(ax) **Pesticide use** means performance of the following pesticide-related activities: application; mixing; loading; transport, storage or handling after manufacturer's seal is broken; cleaning of pesticide application equipment; and any required preparation for container disposal.

(ay) **Plenum air space** means any space under a structure that functions as or is designed to function as a channel for air circulated within the structure.

(az) **Premises** means contiguous land with its improvements or appurtenances or any part thereof.

(ba) **Private application of pesticides** means the application of a restricted use pesticide for the purpose of producing an agricultural commodity: (1) On property owned or rented by the applicator or the applicator's employer; or (2) if applied without compensation other than the barter of personal services between producers of agricultural commodities, on property owned or rented by a party to such a barter transaction.

(bb) **Public park** means any community or other government owned park, picnic area, playground, or school playground or government owned camping area that is maintained for or used by the general public. Public park does not mean large geographic areas such as the Catskill Forest Preserve or the Adirondack Forest Preserve; however, any individual community or government owned campground, picnic area or playground within such areas is a public park.

(bc) **Reduced pressure zone device** means a minimum of two independently active check valves, together with an automatically operated pressure differential relief valve located between the two check valves. During normal flow and at the cessation of normal flow, the pressure between these two check valves must be less than the upstream (supply) pressure. In case of leakage of either check valve, the differential relief valve must operate to maintain the pressure between the check valves at less than the upstream (supply) pressure by discharging to the atmosphere. The unit must include tightly closing shutoff valves located at each end of the device and each device must be fitted with properly located test cocks.

(bd) **Residential application of pesticides** means the application of general use pesticides by ground equipment on property owned or leased by the applicator, excluding any establishments selling or processing food and any residential structure other than the specific dwelling unit in which the applicator resides.

(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 pursuant to subdivisions 325.40(f), (g) and (h) 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.

(bf) **Restricted use pesticide** means a pesticide that is classified for restricted use under the provisions of article 33 of the Environmental Conservation Law or under section 3(d)(1)(C) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended.

(bg) **Rodding** means the subsurface ground application of termiticide by means of the insertion of hollow tubes through which the termiticide is delivered.

(bh) **Structure** means any walled and roofed building.

(bi) **Subsurface ground application** means the placement of any liquid termiticide below-grade or underneath a slab by rodding, trenching, excavation/treated backfill technique, or other means.

Note: Presence of termiticide may appear at grade as the result of subsurface ground application.

(bj) **Termiticide** means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating subterranean termites.

(bk) **Three rinse technique** means that after normal emptying, the container is allowed to drain in a vertical position for 30 seconds. The container is rinsed three times with water or the pesticide carrier being used, allowing 30 seconds for draining after each rinse. Rinse material should be easily measurable. Use one quart for each rinse of a one-gallon can or jug, a gallon for each five-gallon can and five gallons for either 30 or 55-gallon drums. Drain each into the spray tank before

filling it to the desired level or drain into suitable containers for use as a diluent for future formulations of the same pesticide.

(bl) **Trenching** means the subsurface ground application of termiticide by means of the excavation of a narrow ditch and application of termiticide into the ditch or to the excavated soil as it is being replaced.

(bm) **Under the direct supervision of** means: the act or process in which the application of a pesticide is made by a certified commercial pesticide technician or commercial pesticide apprentice acting under the instruction, control and authorization of a certified commercial applicator employed by the same registered business or agency or an individual acting under the instruction and control of a certified private pesticide applicator who is responsible for the actions of that individual.

Section 325.2 Requirements for the use of pesticides.

(a) Pesticides must be used in such a manner and under such wind and other conditions as to prevent contamination of people, pets, fish, wildlife, crops, property, structures, lands, pasturage or waters adjacent to the area of use.

(b) Pesticides are to be used only in accordance with label and labeling directions or as modified or expanded and approved by the department.

(c) All equipment containing pesticides and drawing water from any water source shall have an effective anti-siphon device to prevent backflow.

(d) During pesticide use, the certified applicator, certified technician or commercial pesticide apprentice must have in their custody a copy of the label for each pesticide being used. The certified applicator, certified technician or commercial pesticide apprentice must make each label available for inspection upon request of the department.

Section 325.3 Control of termites.

(a) The following restrictions must be complied with when applying liquid termiticide:

(1) Application of termiticide must be made in strict accordance with both the labeling of the termiticide being used and these regulations. Where termiticide labeling and these regulations address the same point, the more prohibitive requirements of the labeling or these regulations must be complied with.

(2) Prior to subsurface ground application of termiticide by other than the excavation/treated backfill technique, a visual inspection of the application area must be made by an individual certified in the termite subcategory to ensure that termiticide will not move from the application area into a structure. Application near foundations that have holes, cracks or voids must be made only if application is limited to the excavation/treated backfill technique, or if prior to application all holes, cracks and voids are filled with an impervious material in a manner that completely seals any openings and prevents termiticide from moving into the structure.

(3) All pressurized application equipment used for subsurface ground application of termiticide must be equipped with a properly operating pressure gauge that is accurate to within plus or minus three pounds per square inch. During applications, pressure at the nozzle must not exceed 25 pounds per square inch.

(4) During subsurface ground application of termiticide along the exterior of a basement wall, by other than the excavation/treated backfill technique, and during placement of termiticide underneath a concrete slab by angled or horizontal rodding from an area outside the perimeter of the slab, at least two employees of the pesticide business must be present on the premises. During application, one of these employees must be present inside the structure to observe the area of application, and to assist the applicator in detecting any intrusion of termiticide into the structure. At the first indication of any movement of termiticide into the structure, the applicator must immediately cease applying termiticide and initiate appropriate clean-up procedures.

(5) Subsurface ground application of termiticide must not be made to soil at or below the level of the local water table as determined by:

(i) excavation of a test hole dug down to the lowest planned application area if evidence of a high water table is found, such as water stains or efflorescence on the interior surface of foundation walls, or the presence of a sump pit, sump pump or French drain in the structure to be treated. Application of termiticide to soil must not be made unless, at the end of two hours immediately following completion of excavation of the test hole, the test hole does not contain any water or saturated soil; or

(ii) examination of all sump pits in the structure if they exist. Any standing water must be removed from sump pits, and all sump pumps must be removed from sump pits or disconnected from their power source for the next two hours. Application of termiticide to soil must not be made unless, at the end of two hours immediately following removal or disconnection of pumps, sump pits do not contain any water.

(6) Subsurface ground application of termiticide must not be made to soil located within ten feet (10') of a well or cistern as measured across the surface of the soil from the application area to where the well or cistern begins to descend vertically, nor under or adjacent to any structure that contains a well or cistern, unless soil is removed and treated outside the foundation by the excavation/treated backfill technique, or unless a driven (steel casing) well screened in the water table aquifer has been abandoned in a manner which meets all of the following conditions:

- (i) all materials must be removed from the well (inner casings, pumps, pipes, electrical cable, etc.);
- (ii) all appurtenant features must be disconnected (water supply pipe); and
- (iii) all of the casing must be completely sealed with grout, cement or concrete for its entire length. Removal of the outer steel casing is not necessary.

(7) Subsurface ground application of termiticide must not be made to soil within four feet (4') above and beside water pipes that are located between ten feet (10') and twenty-five feet (25') from wells or cisterns, as measured across the surface of the soil from the application area to where the well begins to descend vertically, unless application is limited to the excavation/treated backfill technique.

(8) Application of termiticide must not be made to voids in masonry foundations unless:

(i) termiticide is applied as a subsurface ground application within 42 inches (42") of the points along the foundation that are closest to the footing. Points of application must be on the side of the foundation closest to the footing where soil or a masonry element of construction adjoins the foundation. Anything restricting access to the bare masonry foundation targeted for treatment must be removed to expose an area within 42 inches of the points along the foundation that are closest to the footing; and

(ii) the basement or crawl space enclosed by or containing such foundation is ventilated as follows:

(`a`) immediately following application and for at least seven days thereafter, the area must be ventilated directly to the outside of the structure;

(`b`) the minimum net area of ventilating openings must not be less than one square foot (1 sq. ft.) for each 150 square feet (150 sq. ft.) of interior floor surface of the basement or crawl space area; and

(`c`) there must be at least four vents, and each vent must be located no farther than three feet (3') from each corner.

(9) Subsurface ground application of termiticide must not be made to soil in areas where an air circulation system is to be installed within or beneath a concrete slab or floor unless the air circulation system:

(i) is completely encased in concrete; or

(ii) is constructed of an impervious material such as metal or plastic that is sealed prior to construction of a concrete slab or floor.

(10) Subsurface ground application of termiticide must not be made to structures that have an air circulation system installed within or beneath a concrete slab or floor unless:

(i) all supply and return register outlets throughout the air circulation system are permanently filled and sealed to completely disable the system; or

(ii) application is restricted to soil outside the perimeter of the concrete slab or floor, and application is made from an area outside the perimeter of the concrete slab or floor by vertical rodding, trenching or the excavation/treated backfill technique.

(11) Subsurface ground application of liquid termiticide must not be made to structures with plenum air spaces unless application is restricted to soil outside the foundation, and application is made from an area outside the foundation by vertical rodding, trenching or the excavation/treated backfill technique.

(12) Subsurface ground application or surface application of termiticide must not be made to exposed soil in crawl spaces that are more than eighteen inches but less than five feet in height, as measured from the floor to the underside of floor joists, or basements unless:

(i) the entire exposed soil surface is covered with a concrete slab immediately following application (except areas where utility access panels are constructed); or

(ii) the following measures are complied with:

(`a`) treated areas must be covered with a concrete strip or layer of untreated soil measuring at least the width of treated soil; and

(`b`) the basement or accessible crawl space must not connect with other interior areas of the structure without a separating wall or floor.

The wall or floor must obstruct movement of termiticide vapor to any non-target areas. The wall or floor must be in place for at least seven days following application. Any access doors in the wall or floor must be securely closed immediately following application; and

(`c`) the basement or accessible crawl space area must be ventilated in compliance with clauses 325.3(a)(8)(ii)(a), (b) and (c) of this Part.

(13) Subsurface ground application or surface application of termiticide must not be made to exposed soil in crawl spaces that are eighteen inches or less in height, as measured from the floor to the underside of floor joists, unless:

(i) the entire exposed soil surface is covered with a concrete slab immediately following application (except areas where utility access panels are constructed); or
(ii) the following measures are complied with: (a) the inaccessible crawl space must not connect with other interior areas of the structure without a separating wall or floor. The wall or floor must obstruct movement of termiticide vapor to any non-target areas. The wall or floor must be in place for at least seven days following application. Any access doors in the wall or floor must be securely closed immediately following application; and (b) the inaccessible crawl space area must be ventilated in compliance with clauses 325.3(a)(8)(ii)(a), (b) and (c) of this Part.

(14) Immediately following subsurface ground application of termiticide, all drill holes must be securely plugged with concrete or mortar. Plugs made out of other materials such as plastic, wood or cork must be recessed a minimum of one inch and capped with concrete or mortar.

(15) Retreatment must not be made unless there is an active reinfestation of termites subsequent to a prior application as determined by the visual observation of live termites, or the sealing, extension or reconstruction of mud tubes after they have been disturbed; or there has been a disruption of the termiticide barrier due to construction, excavation, or landscaping. This requirement applies whether the termiticide used for retreatment is chemically different than the termiticide previously used. When there has been a disruption of the termiticide barrier due to construction, excavation, or landscaping, retreatment is restricted to application of the termiticide to the disrupted area only.

Section 325.4 Cleansing and disposal of pesticide containers and disposal of unwanted or unusable pesticides.

(a) Empty noncombustible pesticide containers must be cleansed before disposal, using the three-rinse technique or other methods approved by the Department, as defined in section 325.1 of this Part, except that containers of ready-to-use pesticides that do not require dilution must be drained only for one 30-second period.

(b) After rinsing in accordance with the techniques described in section 325.1 of this Part, empty noncombustible containers must be disposed of as follows:

(1) nonreturnable containers may be disposed of on the property of the applicator in such a manner as to prevent contamination or in a

sanitary landfill operating in accordance with department regulations;
and

(2) returnable containers must be tightly closed to prevent leakage, the exterior cleaned and the containers returned to the supplier.

(c) Empty combustible containers of pesticides shall be disposed of as follows:

(1) in a sanitary landfill operating in accordance with department regulations;

(2) in a high temperature incinerator approved for such use by the department; or

(3) except containers of volatile hormone-type herbicides, at the site of application, if such containers are so destroyed by the end of the day on which they are emptied. Burning shall be done in accordance with the Public Health and Environmental Conservation Laws and the rules and regulations existing thereunder. Empty containers of volatile hormone-type herbicides shall be disposed of either in a sanitary landfill operating in accordance with department regulations or on the property of the applicator in such manner as to prevent contamination.

(d)

(1) Unwanted or unusable pesticides in total quantities per calendar year of 10 pounds or less of dry material active ingredient or five gallons or less of total liquid may be disposed of by burial with at least 18 inches of compacted cover in a manner and at a location such that ground or surface water will not be contaminated, except that no more than one kg (approximately 2.2 pounds or one quart) total quantity, per calendar year, of pesticides listed as acute hazardous waste in paragraph 371.4(d)(5) of this Title may be buried, and no pesticide wastes shall be buried if the label prohibits such burial.

(2) Unwanted or unusable pesticides in total quantities per calendar year greater than 10 pounds active ingredient of dry material or five gallons of total liquid, or greater than one kg (approximately 2.2 pounds or one quart) of pesticides listed in paragraph 371.4(d)(5) of this Title, and any quantity of waste pesticide whose label prohibits burial, shall be disposed of by:

(i) returning to the supplier; or

(ii) by disposal at a hazardous waste facility approved for this use by the department and the United States Environmental Protection Agency, or for an out-of-state facility, by USEPA and the appropriate State agency; or

(iii) by consignment to a pesticide clean-up day approved pursuant to subparagraphs 360.1(f)(1)(xi) or 373-1.1(d)(1)(xviii) of this Title, provided that requirements of subparagraphs 364.1(e)(2)(xviii) and 372.1(e)(3)(iv) are also met.

Section 325.5 Reuse of pesticide containers.

(a) No pesticide container shall be sold or used for any purpose which involves the risk of exposure to humans or animals, including but not limited to, the storage of human or animal food or water; nor shall such containers be used for the storage of cooking utensils, dishes or clothing.

(b) No pesticide containers shall be sold or used for any other purpose unless such purpose has been approved by the commissioner in writing and the containers have been properly decontaminated.

Section 325.6 Protection of individuals using pesticides under the direct supervision of a certified pesticide applicator.

(a) Prior to any pesticide application, the certified pesticide applicator must provide safety training to individuals using pesticides under the certified pesticide applicator's direct supervision. The training shall include, but is not limited to, the following topics: site-typical detailed guidance for pesticide use, pesticide safety, use of personal protective equipment including selection of appropriate respirators, and restricted entry intervals.

(b) Certified pesticide applicators must provide relevant safety information, restricted entry intervals and personal protective equipment and other safety equipment beyond normal work attire, as specified by the pesticide label, to individuals using pesticides under the certified pesticide applicator's direct supervision. However, if the certified pesticide applicator is not the owner or manager of a registered pesticide business, the owner or manager of the business, agency, or facility must provide such information and equipment.

Section 325.7 Pesticide applicator certification and direct supervision requirements.

(a) An individual must not engage in the commercial application of pesticides, the private application of restricted use pesticides, or the sale of restricted use pesticides, unless that individual is a certified applicator and possesses, on their person, a valid identification card issued by the department and makes such identification card available upon request of this department. Full certification is not required for:

- (1) a certified commercial technician, hereinafter referred to as "technician", using general use pesticides;

- (2) a technician using pesticides under the direct supervision of a certified commercial pesticide applicator, as required in subdivision 325.7(d);
- (3) a commercial pesticide apprentice, hereinafter referred to as "apprentice", using pesticides under the direct supervision of a certified commercial pesticide applicator, as required in subdivision 325.7(d);
- (4) an individual using restricted use pesticides under the direct supervision of a certified private pesticide applicator, as required in subdivision 325.7(d), on agricultural commodities located on property owned or leased by the certified private pesticide applicator or the applicator's employer;
- (5) an individual using antimicrobial agents, except where such pesticides have been classified as restricted use pesticides or are used in the pulp and paper process or cooling towers. In these cases, the requirements of paragraphs (1), (2) or (3) of this subdivision apply;
- (6) an individual using aquatic pesticides purchased through a purchase permit, as provided in Title 6 NYCRR Part 326.8, in a body of water measuring one acre or less in size which lies exclusively on their property and has little or no outflow to any surface waters of the State classified pursuant to Article 17 of New York State Environmental Conservation Law;
- (7) a technician engaged in the application of microbial pesticides by ground equipment in or over any surface waters of the State classified pursuant to Article 17 of New York State Environmental Conservation Law. However, such individual must successfully complete a department-approved, 30-hour certification course related to this type of application;
- (8) a doctor of veterinary medicine or a veterinary technician working under the veterinarian's direct supervision, licensed to practice within New York State. Such exemption from certification requirements applies only when engaged in the use of general use pesticides:
 - (i) on animals that are in the veterinarian's care within the veterinary facility;
 - (ii) on inanimate objects, surfaces, and areas within their veterinary establishments.
- (9) an individual engaged in the residential application of pesticides.
 - (b) No certified commercial pesticide applicator or technician shall engage in the application of pesticides for which certification is required in other than the category or subcategory specified on their certification identification card.
 - (c) No certified private pesticide applicator shall:

(1) engage in the application of restricted pesticides in other than the category specified on the certified private pesticide applicator's certification or special permit; or

(2) commercially apply pesticides.

(d) Direct Supervision of Individuals under the Instruction and Control of a Certified Applicator.

(1) On-site direct supervision is required when technicians:

(i) engage in the subsurface ground application of termiticides, the surface application of termiticides to exposed soil in basements and crawl spaces, and the placement of termiticide in voids of masonry foundations;

(ii) apply fumigants, except when using fumigants classified as general use that are applied to in-place utility poles;

(iii) apply pesticides with a label requiring on-site supervision;

(iv) apply aquatic pesticides to any surface waters of the State classified pursuant to Article 17 of the New York State Environmental Conservation Law, except on-site supervision is not required for permitted applications of microbial pesticides to control aquatic pests as described in paragraph 325.7(a)(7);

(2) With regard to an individual under the instruction and control of a certified private pesticide applicator or an apprentice:

(i) On-site direct supervision is required when an apprentice does any of the following:

(`a') applies federally restricted use pesticides;

(`b') applies aquatic pesticides to any surface waters of the State classified pursuant to Article 17 of the New York State Environmental Conservation Law, except on-site supervision is not required when individuals apply aquatic pesticides under the authority of a special purchase permit, as described in section 325.38 of this Part, or apply aquatic pesticides to temporary pools of water which have no outlets;

(`c') applies pesticides with a label requiring on-site supervision;

(`d') applies pesticides within or on the premises of licensed day care facilities, elementary and secondary schools and hospitals;

(ii) On-site direct supervision is required when an individual under the instruction and control of a certified private pesticide applicator applies federally restricted use pesticides;

(iii) Apprentices shall not apply fumigants except when using fumigants classified as general use that are applied to in-place utility poles, engage in the subsurface ground application of termiticides, the surface application of termiticides to exposed soil in basements and crawl spaces, or the placement of termiticides in voids of masonry foundations, or apply pesticides by aircraft.

(iv) Individuals under the supervision of certified private pesticide applicators shall not apply fumigants except when using fumigants classified as general use that are applied to in-place utility poles.

(3) During pesticide use by an individuals under the supervision of a certified private pesticide applicator, a technician, or an apprentice, that requires on-site direct supervision, the certified pesticide applicator must be physically present at the application site and within voice contact of the individual being supervised. When a technician uses a fumigant, the application must be made under the direct observation and instruction of the certified applicator, except when using fumigants classified as general use that are applied to in-place utility poles.

(4) Off-site direct supervision is allowed when an individual working under the instruction and control of a certified private applicator or apprentice uses pesticides that do not require on-site supervision as listed in paragraph 325.7(d)(2) or when a technician applies restricted use pesticides other than those requiring on-site supervision or those applied by aircraft.

(5) During pesticide use that allows off-site direct supervision, the certified commercial applicator must ensure that the apprentice or technician has a means to contact and is able to contact the supervising certified applicator within a reasonable time not to exceed 30 minutes and that a technician applying pesticides by aircraft maintains radio contact with the certified applicator.

(6) A certified commercial pesticide technician may apply aquatic microbial pesticides as described in paragraph 325.7(a)(7) or general use pesticides without working under the direct supervision of a certified applicator except when using fumigants that require on-site supervision or when using termiticides by subsurface ground application, surface application to exposed soil in basements or crawl spaces, by placement in voids and masonry foundations, or when applying pesticides by aircraft.

Section 325.8 Eligibility for pesticide applicator certification.

(a) **Commercial Applicator:** An individual shall be eligible for commercial pesticide applicator certification in specific categories or subcategories if that individual has:

(1) at least one year of verifiable experience as a technician with an additional 12 hours of category-specific recertification training, or has two years of verifiable experience as a technician and has not had the technician certification suspended, revoked or modified as provided in section 325.13, and petitions the department for full certification; or

(2) at least three years of verifiable full-time experience within the last five years as an apprentice working in the category or categories of commercial pesticide application, as listed in section 325.16, in which the individual is seeking certification and has passed the core and appropriate category examinations. For purposes of this paragraph, a year of full-time experience shall be deemed to have been met when a full season's experience is completed in those certification categories that are seasonal; or

(3) at least three years of verifiable experience within the past five years as a certified private pesticide applicator in a corresponding private category and has successfully passed the appropriate commercial category examinations; or

(4) certification in another state with which New York State has reciprocity; or

(5) at least three years experience in the sale of pesticides or industrial chemicals, or can otherwise demonstrate, through applicable training certifications or educational degrees, that the individual possesses appropriate technical background, as determined by the department, and has successfully passed the appropriate certification examination(s), if seeking pesticide applicator certification in the Sales Category.

(b) To be eligible for certification in subsequent categories of commercial applicator certification, an individual must have at least one year of experience in the category in which the individual seeks certification or obtain 12 hours of such category-specific training, approved by the department, except that:

(1) individuals certified in Ornamental and Turf Pest Control, Forest Pest Control or Right-of-Way Pest Control meet the experience or training requirements to be eligible for certification in any of these categories; and

(2) individuals certified in Agricultural Plant, Animal Pest Control, Ornamental & Turf and Forest Pest Control do not need to meet the experience requirement to be eligible for certification in Regulatory Pest Control.

(c) **Private Applicator:** An individual shall be eligible for private applicator certification in specific categories or subcategories if that individual has met the experience or training requirements as set forth below and successfully passed the necessary examinations.

(1) The applicant must be at least 17 years of age at the time an application for certification is made, and;

(2) have at least one year of full-time experience within the last three years in the use of pesticides in the category or categories of private pesticide certification as listed in section 325.17, in which the individual is seeking certification. For purposes of this paragraph, full-

time experience shall be deemed to have been met when the individual has had at least one growing season of experience in those certification categories that are seasonal; or

(3) have completed a comprehensive 30-hour training course, approved by the department, in topics described in section 325.18 and related categories in sections 325.16 and 325.17; or, alternatively, have received an associate's or higher level degree from an accredited college or university which covers the topics listed in section 325.18 and related categories in sections 325.16 or 325.17.

(4) have one year of verifiable experience as a certified commercial applicator in a corresponding commercial category.

Section 325.9 Eligibility for pesticide technician certification.

(a) For an individual to be eligible for commercial pesticide technician certification, the individual must:

(1) be at least 17 years of age at the time an application for technician certification is made; and

(2) have successfully completed a comprehensive 30-hour training course, approved by the department, in topics described in section 325.18 and related categories and in sections 325.16 or 325.17, or, alternatively, have received a baccalaureate or associate degree from an accredited college or university which covers the topics listed in section 325.18 and related categories in sections 325.16 or 325.17, and have passed the core and appropriate category examination(s); or

(3) have two years of verifiable experience as an apprentice and have passed the core and appropriate category examination(s).

Section 325.10 Eligibility and training for pesticide apprentices.

(a) Each individual engaged in the commercial application of pesticides who is not a certified applicator or technician is considered a pesticide apprentice. An apprentice must be at least 16 years of age. An apprentice is required to receive 40 hours of pesticide use experience under the supervision of a certified applicator and receive a minimum of 8 hours of instruction on the requirements in section 325.18 of this Part, before such apprentice can apply general use pesticides under the off-site direct supervision of a certified applicator. It is the responsibility of the certified pesticide applicator or registered business to determine and so state that an apprentice is competent to perform applications.

(b) For specific applications that are infrequent and narrow in scope, and where there is little risk associated with the application, a certified commercial pesticide applicator may request, and the department may approve on a case-by-case basis, amended training requirements for such special circumstances.

(c) Documentation that a certified commercial pesticide applicator observed and instructed the apprentice as required in subdivision 325.10(a) of this Part must be maintained by the certified commercial pesticide applicator or registered business for three years. Such documentation must be made available to the department upon request. Documentation must include the following:

- (1) name and address of apprentice;
- (2) date(s) of instruction or observation;
- (3) content of training and certification category;
- (4) instructor's name and certification identification number; and
- (5) an evaluation concluding that the apprentice is competent to perform pesticide applications.

(d) A copy of the documentation required in paragraph 325.10(c) of this Part must be made available to the apprentice if requested.

Section 325.11 Examination requirements for pesticide applicators and technicians

(a) The department must conduct proctored examinations to verify competence in the categories or subcategories for which certification is sought.

(b) Application for the examinations must be made on a form supplied by the department which shall be filed at the appropriate office of the department prior to the announced closing date for examination applications as determined by the department.

(c) To become certified an applicant shall be required to pass two separate written examinations: a core examination and a category or subcategory examination which must be specific to the commercial or private category or subcategory in which the applicant has applied to be certified, except an applicant requesting certification through reciprocity shall not be required to take these examinations.

(d) An applicant who applies to be certified in more than one category or subcategory must pass all the appropriate category or subcategory examinations.

(e) An applicant who fails the core examination twice must successfully complete a course or courses of instruction approved for at least eight credit hours prior to re-examination. Such courses must cover all topics enumerated in section 325.18 of this Part.

(f) An applicant who fails a category or subcategory examination three times in succession must retake both the core and category or subcategory examinations.

(g) An applicant who passes a core examination must also pass a category examination within six months. Failure to do so will require the applicant to retake the core examination.

(h) An applicant who passes a core and category examination and does not pay the required certification fees within six months, must retake both the core and category examinations.

(i) A fee in the amount specified by Article 33 of the Environmental Conservation Law is required for taking a core and category examination and each subsequent examination.

(j) An applicant will be eligible for the commercial pesticide applicator, technician and private pesticide applicator certification examinations, if the applicant:

(1) applies to the department, as required in subdivision 325.10(b) of this section;

(2) meets the eligibility requirements, as specified in sections 325.8 and 325.9 of this Part; and

(3) has paid the appropriate fees required in Article 33 of the Environmental Conservation Law.

(k) An applicant who fails to attend a scheduled examination session in which a prepaid examination fee is required shall forfeit such fee.

Section 325.12 Identification card issuance and renewal requirements for pesticide applicators and technicians.

(a) On passing the required core and appropriate category examinations, an individual will receive a notice to pay the appropriate certification fees. Fees shall be in the amount specified in Article 33 of the Environmental Conservation Law.

(b) On receipt of the required fees, the department will issue an identification card to the certified applicator or technician. The identification card will specify the categories and subcategories of commercial applicator or technician or private applicator in which the applicator may engage.

(c) The certification of categories or subcategories of certification shown on a pesticide applicator or technician certification identification card shall be valid for a period of three years, unless suspended, revoked or otherwise modified by the department.

(d) Certified pesticide applicators or commercial technicians must complete the following requirements to renew their pesticide applicator certification identification card:

(1) pay the fee(s) specified by Article 33 of the Environmental Conservation Law; and

(2) have a history of satisfactory performance for each category or subcategory. A history of satisfactory performance is indicated by possession of a valid certification identification card that has not been suspended, revoked or modified as provided in section 325.13 of this Part.

(e) A certified pesticide applicator or technician whose certification has been expired for three or less years may renew such certification by paying the appropriate fee, as specified in Article 33 of the Environmental Conservation Law. Upon payment of such fee the applicator's certification will be renewed for three years from the prior expiration date.

(f) The certification of a certified pesticide applicator or commercial technician whose certification has been expired for three years or more may not be renewed until the applicator has retaken and passed the core and category examinations.

Section 325.13 Denial, Suspension or Revocation of Certified Pesticide Applicators and Technician Certification.

(a) The department may deny an application for a certification identification card or may suspend, revoke or otherwise modify such identification card once issued, for reasons including, but not limited to, the following:

(1) any statement in the application or upon which the identification card was issued is or was false or misleading;

(2) the applicant or certified pesticide applicator has been convicted of a felony;

(3) the applicant or certified pesticide applicator applied or used any pesticide contrary to the registered label, labeling usage or usages that have been approved, modified or expanded and approved by the department;

(4) the applicant or certified pesticide applicator has been found to have engaged in fraudulent business practices in the application of pesticides;

(5) the applicant or certified pesticide applicator has failed to comply with any provision of Article 33, Title 3 of Article 15 of the

Environmental Conservation Law, or rules and regulations of the department made pursuant thereto;

(6) the applicant or certified pesticide applicator has failed to demonstrate sufficient knowledge and experience concerning the proper use and application of pesticides;

(7) the applicant or certified pesticide applicator has falsified any records or reports or has failed to maintain such records or reports required by this Part or any applicable statute; or

(8) the applicant or certified pesticide applicator has been convicted of a criminal violation under section 14(b) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135 et. seq.) hereinafter referred to as FIFRA, as amended, or has been made subject to a final order imposing a civil penalty under section 14(a) of FIFRA, as amended.

(b) An applicant or certified pesticide applicator must be given the opportunity of a hearing upon at least 20 days advance notice, prior to any such proposed denial, suspension, revocation or material modification.

Section 325.14 RESERVED

Section 325.15 RESERVED

Section 325.16 Categories of commercial pesticide application.

(a) Agricultural and animal pest control.

(1) **Plant.** This subcategory includes commercial applicators using or supervising the use of pesticides, including chemigation, in production of agricultural crops, including but not limited to corn, alfalfa, feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; on grasslands; noncrop agricultural lands; and sod, flowers and shrubs.

(2) **Agricultural Animals.** This subcategory includes commercial applicators using or supervising the use of pesticides on animals, including but not limited to, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry and livestock, as well as to places on or in which animals are confined.

(3) **Companion Animals.** This subcategory includes commercial applicators using or supervising the use of pesticides on companion animals.

(4) **Fumigation of Soil and Agricultural Commodities.** This subcategory includes commercial applicators using or supervising the

use of pesticides for soil fumigation in production of agricultural commodities and the use of pesticides for fumigation of agricultural commodities. Certification in this subcategory requires concurrent certification in Subcategory (1), Agricultural Plant Pest Control.

(b) **Forest pest control.** This category includes commercial applicators using or supervising the use of pesticides to control pests in forests, forest nurseries, forest seed producing areas and forested areas within urban settings.

(c) **Ornamental and turf pest control.** This category includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental and shade trees, shrubs, flowers and turf, interior plant maintenance, greenhouses and nurseries, flood control structures, golf courses, outdoor broadcast treatments for fleas, ticks, and other such pests, forest insects or disease control for aesthetic purposes. This category also includes the use of animal repellents on lawns or shrubs. The turf subcategory also includes pre- or post-construction herbicide treatment for driveways, parking lots and other such facilities. This category contains, but is not limited to, the following subcategories:

(1) ornamentals, shade trees and turf;

(2) turf; and

(3) interior plant maintenance.

(d) **Seed treatment.** This category includes commercial applicators using or supervising the use of pesticides on seeds intended for planting on property not owned or leased by the applicator, including seed treaters who apply pesticides to seeds of other individuals and seed plant operators treating seeds before or after sale.

(e) **Aquatic pest control.** This category includes commercial applicators using or supervising the use of any pesticide purposefully applied to standing or running water, excluding applicators engaged in public health-related activities included in subdivision (h) of this section. This category contains, but is not limited to, the following subcategories:

(1) **Aquatic vegetation control.** This subcategory includes control of algae and weeds in swimming pools and in any surface waters of the State classified pursuant to Article 17 of the Environmental Conservation Law.

(2) **Aquatic insect and miscellaneous aquatic organisms control.** This subcategory includes the control of aquatic insects such as mosquito and black fly larva and miscellaneous organisms such as mollusks, leeches and snails.

(3) **Aquatic fish control.** This subcategory includes treatment to control or eliminate unwanted fish including sea lamprey.

(4) **Aquatic antifouling paints.** This subcategory includes application of aquatic antifoulant paints and preservatives.

(5) **Sewer line root control.** This subcategory includes the use of pesticides to eliminate tree roots from sewers and other discharge pipes.

(f) **Rights-of-way pest control.** This category includes commercial applicators using or supervising the use of pesticides in the maintenance of highways, electric power lines, gas or other pipelines, railway rights-of-way and other related facilities such as, but not limited to, the areas around generating stations, substations, pumping stations and associated buildings and in-place applications to utility poles.

(1) **Rights-of-way industrial vegetation control.** This subcategory includes commercial applicators using or supervising the use of pesticides in the maintenance of rights-of-way and related facilities.

(2) **Rights-of-way in place pole treatments.** This subcategory includes commercial applicators using or supervising the use of pesticides for protecting in-place utility poles, including the use of pole fumigants.

(g) **Industrial, institutional and structural pest control.** This category includes commercial applicators using or supervising the use of pesticides in, on or around food handling establishments, dwellings, institutions such as schools and hospitals, industrial establishments, including warehouses and grain elevators and any other structures and adjacent areas, public or private; and for the protection of stored, processed or manufactured products. Fumigation may only be performed by individuals certified in the fumigation or food processing subcategories, except for individuals applying general use fumigants to in-place wood poles. Applicators using fumigants in food facilities must be certified in the food processing subcategory. This category contains, but is not limited to, the following subcategories:

(1) **Structural and rodent.** This subcategory includes pests, such as but not limited to, rodents, roaches, ants, fleas, ticks and stinging and biting insects within or associated with structures, excluding food processing areas and post construction wood destroying organisms, This subcategory does not include application of termiticides.

(2) **Fumigation.** This subcategory includes, but is not limited to, : fumigant use for rodent control in structures; elimination of experimental laboratory rodents; rodent and mole control (fumigation of burrows); pest control in raw food commodity storage, transportation facilities, trucks, railroad cars, vehicles and food processing establishments.

(3) **Termite.** This subcategory includes the control of termites.

(4) **Lumber and wood products.** This subcategory includes: preserving poles and lumber; pesticide applications at logging decks; and activities associated with construction not covered by other categories.

(5) **Food processing.** This subcategory includes commercial pesticide applications to areas other than individual residences, where exposed food or food products are prepared, packaged or held for further distribution or consumption, including the use of fumigants to control appropriate food pests.

(6) **Cooling towers, pulp and paper process.** This subcategory includes the use of antimicrobials to control bacteria and other such single cell organisms.

(7) **Other.**

(h) **Public health pest control.** This category includes State, federal or other governmental personnel, their contractors and other commercial applicators using or supervising the use of pesticides in public health programs for the management and control of pests.

(i) **Regulatory pest control.** This category includes State, federal or other governmental personnel who use, or supervise the use of pesticides in the control of regulated pests, including New York State Department of Agriculture and Markets personnel (veterinarians and horticultural, food and apiary inspectors) and United States Department of Agriculture personnel.

(j) **Demonstration and research pest control.** Certification in this category requires concurrent certification in a second category of specialty. This category includes, but is not limited to, the following:
(1) individuals who demonstrate to the public the proper use and techniques of application of pesticides or who supervise such demonstration, including master gardeners, cooperative extension agents, soil and water conservation personnel; and
(2) individuals conducting or supervising field research with pesticides, including State, federal, university personnel and other individuals conducting field research on or utilizing pesticides.

(k) **Aerial pest control.** This category includes all pilots engaged in commercial or private aerial pesticide applications. This category is specific to the actual application of pesticides by air and does not include making pesticide recommendations associated with the application. Aerial applicators providing services associated with pest management, such as making pesticide recommendations, must obtain concurrent certification in the appropriate category.

(l) **Sales.** This category includes individuals who sell, distribute or supervise the sale or distribution of restricted use pesticides. Such individuals are not authorized to commercially use pesticides without obtaining a second category of specialty.

Section 325.17 Categories of private pesticide application.

(a) **Agricultural plant pest control.** This category includes certified private pesticide applicators using or supervising the use of restricted pesticides including chemigation in production of agricultural crops, including but not limited to corn, alfalfa, grains, soybeans and forage; vegetables, small fruits, tree fruits and nuts; grasslands; non-crop agricultural lands; sod farms and nurseries. This category includes, but is not limited to, the following subcategories:

- (1) **Field and forage;**
- (2) **Fruit;**
- (3) **Vegetable;**
- (4) **Greenhouse and florists;**
- (5) **Nursery, ornamentals and turf.**

(b) **Agricultural animal pest control.** This category includes certified private pesticide applicators using or supervising the use of restricted pesticides on animals, including but not limited to beef cattle, dairy cattle, swine, sheep, horses, goats, poultry and other livestock, as well as to places on or in which animals are confined.

(c) **Aquatic pest control.** This category includes certified private pesticide applicators using or supervising the use of any restricted pesticide purposefully applied to standing or running water to control aquatic vegetation and insects.

Section 325.18 Certification training course requirements for commercial technicians and courses designed for recertification of commercial and private applicators.

(a) Training courses to be conducted for all individuals applying for commercial technician certification or commercial or private applicator recertification credits must be approved by the department in advance of the course being offered. Thirty-hour or equivalent training courses and recertification training courses must include topics or components as prescribed by the department. Such topics include, but are not limited to the following general standards for all categories of certified commercial applicators in which commercial applicators are expected to be able to demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides:

- (1) Integrated pest management principles and practices.

(i) Systematic approach to managing pests which focuses on long-term prevention or suppression with minimal impact on human health, the environment and nontarget organisms; and

(ii) Incorporate all reasonable measures to prevent pest problems by properly identifying pests, monitoring population dynamics, and utilizing cultural, physical, biological or chemical pest population control methods to reduce pests to acceptable levels.

(2) Label and labeling comprehension.

(i) The general format and terminology of pesticide labels and labeling;

(ii) The understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;

(iii) classification of the product, general or restricted; and

(iv) necessity for use consistent with the label.

(3) Safety. Factors including:

(i) pesticide toxicity and hazard to man and common exposure routes;

(ii) common types and causes of pesticide accidents;

(iii) precautions necessary to guard against injury to applicators and other individuals in or near treated areas;

(iv) need for and use of protective clothing and equipment;

(v) symptoms of pesticide poisoning;

(vi) first aid and other procedures to be followed in case of a pesticide accident; and

(vii) proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.

(4) Environment. The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:

(i) weather and other climatic conditions;

(ii) types of terrain, soil or other substrate;

(iii) presence of fish, wildlife and other non-target organisms; and

(iv) drainage patterns.

(5) Pests. Factors such as:

(i) common features of pest organisms and characteristics of damage needed for pest recognition;

(ii) recognition of relevant pests;

(iii) pest development and biology as it may be relevant to problem identification and control; and

(6) Pesticides. Factors such as:

(i) types of pesticides;

(ii) types of formulations;

(iii) compatibility, synergism, persistence and animal and plant toxicity of the formulations;

(iv) hazards and residues associated with use;

- (v) factors which influence effectiveness or lead to such problems as resistance to pesticides; and
- (vi) dilution procedures.
- (7) Equipment. Factors including:
 - (i) types of equipment and advantages and limitations of each type; and
 - (ii) uses, maintenance and calibration.
- (8) Application techniques. Factors including:
 - (i) methods of procedure used to apply various formulations of pesticides, solution and gases, together with a knowledge of which technique of application to use in a given situation;
 - (ii) relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
 - (iii) prevention of drift and pesticide loss into the environment.
- (9) Laws and regulations. Applicable state and federal laws and regulations.
 - (b) Individuals conducting certification and recertification training courses must have appropriate credentials recognized by the department or have at least three years of verifiable experience as a certified pesticide applicator. Acceptable credentials for individuals wishing to conduct certification and recertification courses include academic credits in courses which are to be covered by such training courses. The department may determine that individuals with a previous enforcement record may not be eligible to conduct certification and recertification courses.

Section 325.19 Standards for commercial pesticide applicator certification.

- (a) Individuals seeking commercial pesticide applicator certification must demonstrate competency in the categories and subcategories of commercial pesticide applicator certification, according to standards prescribed by the department.
Competence in the use and handling of pesticides shall be determined on the basis of written examinations prepared by the department, and, as appropriate, performance testing, based upon standards set by the department. Such examination and testing shall include general standards applicable to all categories and additional standards specifically identified for each category or subcategory in which an applicator is to be classified.

Section 325.20 Standards for private applicator certification.

(a) As a minimum requirement for certification, a private applicator must demonstrate a practical knowledge of pest problems and Integrated Pest Management practices associated with agricultural operations according to standards prescribed by the department. Competence in the use and handling of pesticides shall be determined on the basis of written examinations prepared by the department and as appropriate, performance testing, based upon standards set by the department. Such examinations and testing shall include general standards applicable to all categories and additional standards specifically identified for each category or subcategory in which the applicator is to be classified.

Section 325.21 Recertification requirements for pesticide applicators and technicians.

(a) Certified pesticide applicators must be recertified in each category or subcategory every six years by completing the following requirements no later than 90 days beyond their recertification date:

- (1) pay the fee(s) specified by Article 33 of the Environmental Conservation Law; and
- (2) have a history of satisfactory performance for each category or subcategory; and
- (3)
 - (i) successfully pass a recertification examination. The required recertification examinations must include topics listed in section 325.18 of this Part; or
 - (ii) accumulate the following continuing education credits, which must be obtained in more than one calendar year and consist of at least 25 percent category-specific training for each category of certification. Individuals certified in the regulatory and demonstration categories are excluded from 25% category-specific requirement.

('a') COMMERCIAL CATEGORY	CREDIT HOURS
Agricultural Plant	16
Agricultural Animal	12
Companion Animal	10
Forest	12
Ornamental & Turf	20
Seed Treatment	10
Aquatic - Vegetation	16

Aquatic - Insect	16
Aquatic - Fish	16
Aquatic - Anti Fouling Paints	10
Aquatic - Sewer Line Root Control	10
Rights-of-Way	16
Structural & Rodent	24
Fumigation	12
Termite Control	16
Lumber & Wood Products	12
Food Mfg. & Processing	24
Cooling Towers	10
Public Health	16
Regulatory	10
Demonstration	10
Aerial	12
Sales of Restricted Use Pesticides	6

('b') PRIVATE CATEGORY	CREDIT HOURS
Agricultural Plant	12
Agricultural Animal	10
Aquatic	10

(b) Sponsors of recertification courses or 30-hour certification courses must issue certificates to only course participants who have completed the entire course. These certificates must contain such information as the department may require including but not limited to, the applicator's name and certification number, name of place and date of training, course identification number, and signature of sponsor, and for recertification courses the number of credits assigned to each category or subcategory. The certificate must be designed in a way as to deter counterfeiting, which may include the use of watermarks, seals or other printing security methods.

(c) Sponsors of department approved recertification or 30 hour courses who have not provided the department with specific dates and

course locations, must notify the department at least 48 hours prior to the start of each such course in such a manner as the department may require.

(d) Certified technicians must recertify every six years by paying the fee specified by Article 33 of the Environmental Conservation Law.

(e) A certified pesticide applicator who fails to recertify within 90 days to two years following their certification expiration date shall not be recertified until the applicator has accumulated the recertification training credits listed in paragraph 325.21(a)(3) or has successfully passed a recertification examination, and acquired an additional six hours of training approved by the department. The six training hours must be accumulated after the certification expiration date of the category or subcategory on the certification identification card.

(f) A certified pesticide applicator or technician who fails to recertify within two years of the certification expiration date shall not be recertified until the applicator or technician has retaken and passed the core and category and/or subcategory examination(s) for the expired categories or subcategories.

(g) An individual whose certification has been suspended cannot be recertified until all examinations have been repeated as required in section 325.11 of this Part.

Section 325.22 RESERVED.

Section 325.23 Business and agency registration.

(a) Each agency that applies pesticide and each business offering, advertising or providing the services of commercial application of pesticides, either entirely or as part of the business, must register annually with the department on forms supplied by the department. Agency, as defined in section 33 of the ECL, means any state agency; municipal corporation; public authority; college, as that term is defined in the education law; railroad, as that term is defined in the railroad law; or telegraph, telephone, telegraph and telephone, pipeline, gas, electric, or gas and electric corporation as those terms are defined in the state transportation corporations law, which applies pesticides.

(b) An annual fee in the amount specified in Article 33 of the Environmental Conservation Law must be paid to the department at the time of registration, except that any agency which is a state agency, municipal corporation, public authority, or college shall be exempt from any fee for registration pursuant to section 33-0911 of the ECL.

(c) Business firms required to register with the department under section 325.23(a) of this Part that have more than one place of

business within the State must register and pay the annual registration fee for each such place of business. Individuals conducting business under more than one name must register and pay the annual registration fee for each such name at each place of business. A business firm using a telephone answering service as an extension of the business in a location where the business does not otherwise maintain an office but where messages are collected and given directly to employees of the registered business who will service these accounts must pay a registration fee for each location where such messages are collected. Answering services directing messages to registered places of business are not required to register with the department.

(d) Registration shall be valid for a period of one year unless suspended, revoked, or otherwise modified by the commissioner.

(e) The commissioner may deny an application for a business registration or may suspend, revoke or otherwise modify such registration once issued for reasons, including, but not limited to the following:

(1) that any statement in the application or upon which the registration was issued, is or was false or misleading;

(2) that the applicant or registered business has been convicted of a felony;

(3) that a present employee of the applicant or registered business, or a former employee in the course of such employment, applied or used any pesticide contrary to the registered label usage; or as modified or expanded and approved by the department;

(4) that the applicant or registered business has been found to have engaged in fraudulent business practices in the application of pesticides;

(5) that the applicant or registered business, or any present employee or former employee in the course of such employment, has failed to comply with any provision of article 33, or title 3 of article 15 of the Environmental Conservation Law, or rules and regulations of the department made pursuant thereto;

(6) that the applicant or registered business has failed to employ individuals who have demonstrated that they have sufficient knowledge and experience concerning the proper use and application of pesticides gained either through certification or through company training and on-the-job training after employment;

(7) that the applicant or registered business has falsified any records or reports or has failed to maintain such records or reports required by this Part or any applicable statute; or

(8) that the applicant or registered business, or any present employee or former employee in the course of such employment, has been

convicted of a criminal violation under section 14(b) of FIFRA, as amended, or has been made subject to a final order imposing a civil penalty under section 14(a) of FIFRA, as amended.

(f) Any applicant or registered business or any present or former employee of such business cited by the commissioner for a violation of paragraphs (e)(1) -(8) of this section shall be given the opportunity of a hearing, upon at least 20 days advance notice, prior to any such proposed denial, suspension, revocation or material modification.

(g) Business firms shall carry a minimum of \$300,000 individual and \$1,000,000 per incident bodily injury insurance and \$300,000 property damage insurance, or a surety bond of comparable value, issued by a company licensed to do business in the State of New York and in a form acceptable to the department, as proof of financial responsibility.

(h) No business or agency providing the services of commercial application of pesticides shall engage in the commercial use of pesticides unless the business has at least one employee who is a certified commercial pesticide applicator or technician, certified in the proper category in which the business intends to engage at each location required to be registered.

A registered business using pesticides in Category 7 - Industrial, Institutional, or Structural; Category 5 - Aquatics; Category 1 - Agriculture; or businesses applying pesticides by aircraft must employ at least one certified commercial pesticide applicator, certified in these categories.

Section 325.24 Exemption from agency registration fees.

The following agencies shall be exempt from the annual agency registration fee: State agencies, public authorities, school districts, counties, towns, cities, villages and colleges as that term is defined in the Education Law.

Section 325.25 Records and reports.

(a) All businesses required to register pursuant to section 325.23 of this Part shall keep true and accurate records in a manner specified by the department showing: the kind and quantity of each pesticide used; dosage rates; methods of application; target organisms; and the use, date and place of application for each pesticide used. These records shall be maintained on an annual basis and retained for a minimum of three years and shall be available for inspection upon request by the department.

(b) All such businesses shall file annual reports with the department at its main office in Albany no later than January 15th of each year, such reports to cover the previous calendar year. The reports shall be on forms provided by the department and shall list the quantity of pesticides used, reported for each product. EPA registration numbers shall be used as a reference to the product; product names shall not be used.

(c) Commercial applicators who are not employed by a registered business, including, but not limited to building superintendents and employees of cemeteries or golf courses, shall keep true and accurate records as provided in subdivision (a) of this section and file reports as provided in subdivision (b) of this section.

(d) The private applicator shall maintain a record on forms to be provided by the department of the restricted use pesticides purchased, the crop treated by such, their method of application, and the date of their application or applications. This information shall be maintained on an annual basis and retained for a minimum of three years, and shall be available for inspection upon request by the department.

Section 325.26 Identification of commercial pesticide applicators and application equipment or vehicles transporting commercial pesticide applicator equipment.

(a) Each certified commercial applicator shall be provided by the department with a set of two numbered stickers for each piece of commercial application equipment. These stickers shall be prominently displayed on opposite sides of each piece of such equipment or on opposite sides of each vehicle used in transporting such equipment except however:

(1) Small pieces of hand held or portable equipment such as two and one-half gallon sprayers or back pack mistblowers do not require such stickers and;

(2) noncommercial-type vehicles transporting small quantities of pesticides or portable pesticide equipment are not required to display the stickers if such display will change the rating of the vehicle and thereby limit its access to certain transportation routes normally used.

(b) Each certified commercial applicator shall be provided by the department with suitable means of personal identification.

Section 325.27 Equipment inspection.

The commissioner may provide for the inspection of any equipment, device or apparatus used for the commercial application of pesticides and may require repairs or other changes before approval is given for further use of such equipment.

Section 325.28 - 325.37 RESERVED.

Section 325.38 Special permits.

(a) The department may issue a special permit to an uncertified applicator who cannot read English to use a particular restricted use pesticide for a period of time not to exceed the use season in which it is issued. Such a permit may not be issued until the department determines that the applicant is competent to use such pesticide. Such determination may be based on written certification by a department-approved training agent in the county in which the applicant resides or works that the applicant has specialized training from such agent and that the applicant has successfully completed a demonstration-type examination administered by the agent showing that the applicant has met the minimum requirements of section 325.18

(b) The department may issue to a certified private applicator a special permit authorizing purchase and use of a restricted use pesticide on an agricultural commodity for which the private applicator does not have a current certificate. Such permit shall be valid only for the growing season for which it is issued. An individual may not be issued such a permit for more than two consecutive seasons.

Section 325.39 RESERVED.

Section 325.40 Commercial Lawn Applications.

This section shall be effective on January 1, 2004. The requirements of this section pertain to any commercial lawn application of a pesticide except for the application of a pesticide to a right-of-way (unless required pursuant to paragraph 325.1 (s)(4).

(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 owner of the property to which the commercial lawn application is to be made or the owner's agent. A written contract must:

- (1) specify the approximate date or dates of application or applications; if requested by the property owner or owner's agent, the specific date or dates of the application(s) must be provided by the pesticide applicator or business and that date must be stated in the contract. The following statement must be prominently displayed in the contract: "The property owner or owner's agent may request the specific date or dates of the application(s) to be provided and, if so requested, the pesticide applicator or business must inform of the specific dates and include that date or dates in the contract.
 - (2) state the total number of commercial lawn applications to be provided; and
 - (3) state the total cost of the commercial lawn application service to be provided; and
 - (4) include a written copy, in at least 12-point type of:
 - (i) a list of pesticides to be applied including brand names and generic names of active ingredients; and
 - (ii) 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,
 - (iii) 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; and
 - (5) state the name of the property owner or owner's agent and the address of the premises to be treated; and
 - (6) 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 a prepayment check, in the exact amount specified in the written contract for the agreed-upon services;
 - (7) be amended, if changes are made to any of the elements of the contract required by this section, including, but not limited to the elements listed in Paragraphs 325.40(a)(1) through (6); a contract renewal; or a multi-year contract. The pesticide applicator or business must obtain written proof of acceptance of the owner or owner's agent of such contract amendments prior to applying pesticides.
- (b) 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 commercial lawn 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.

(c) Alternate date or dates. In the event that the commercial lawn application on the date or dates specified in the contract becomes infeasible, the pesticide applicator or business must provide the owner or owner's agent oral or written notice of any proposed alternate date or dates. The pesticide applicator or business must obtain acceptance from the owner or owner's agent of such alternate date or dates prior to initiating any commercial lawn application.

(d) Specific pesticide notification. If the contract does not state which pesticide(s) of a group of pesticides will be applied on a proposed date, or if the pesticide applicator or business has not advised the owner or owner's agent of this information, the pesticide applicator or business must, prior to application, provide to the owner or owner's agent a written notice which indicates the specific pesticide(s) to be used.

(e) 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 must make such copies available for inspection upon request by the department.

(f) Visual notification. Visual notification markers must be posted by any pesticide applicator or business performing a commercial lawn application described in this section. Such markers must be at least four inches by five inches in size and letters on the markers must be at least three-eighths of an inch in height. Such markers must, by January 1, 2005, be yellow in color, have lettering which is black in color and be constructed of rigid material. All such markers must include on the front of the marker:

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

(2) the specific date and time of the actual commercial lawn application, unless the date and time are provided to the property owner or owner's agent immediately following application and prior to leaving the premises;

(3) the phrase "DO NOT ENTER"; and

(4) the phrase "DO NOT REMOVE SIGN FOR 24 HOURS"; and

(5) 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.

(g) Other information. The only text and image allowed on the front of the marker are those required by this regulation and the name and telephone number of the applicator business. Any other text and/or images must be placed on the back of the marker.

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

(1) must be placed 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

(4) must be placed not more than fifty (50) feet apart along the perimeter of the treated area in the event that markers used are between four inches by five inches in size and five inches by five inches in size; or not more than one-hundred (100) feet apart along the perimeter of the treated area in the event that markers used are at least five inches by six inches in size; and

(5) must also be placed at common points of entry adjacent to the treated areas including, but not limited to, driveways and walkways; and

(6) 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.

(i) Pesticide Product Labels. As provided in Environmental Conservation Law Section 33-0905, every certified applicator must, prior to application of a pesticide within or on the premises of a dwelling, supply the occupants therein with a written copy of the information, including any warnings, contained on the label(s) of the pesticide(s) to be applied.

(1) Every certified applicator must, prior to the application of a pesticide within or on the premises of a multiple dwelling, building, or structure other than a dwelling, supply the owner or the owner's agent, with a written copy of the information, including all warnings, contained on the label(s) of the pesticide(s) to be applied. The owner or owner's agent must make available upon request at reasonable

times the written copy of the information contained on the label to the occupants or residents of such multiple dwelling, building, or structure. (2) The certified applicator may exclude from the written copy of the information on the label(s) instructions that do not pertain to the commercial lawn application. If such information is excluded, the applicator or business must note on the label that it is an amended label and the applicator and business must provide the complete label, if requested by the owner or owner's agent.

Section 325.41 County (or City) Implementation of ECL 33-1004.

The requirements of this section relate only to commercial or residential lawn applications in any County not contained entirely within a city, and any city with a population of one million or more, which has adopted, after public hearing, a local law comprised of the provisions of New York State Environmental Conservation Law section 33-1004 in their entirety and without exception.

(a) Retail establishments that sell general use pesticides labeled for commercial or residential lawn application uses must post in a conspicuous place as close as possible to each display location of such pesticides an informational sign containing the following statements in letters in at least 16 point bold type against a brightly colored background, except that any such retail establishment located in a city with a population of one million or more must substitute the word "City" for the word "County":

(1) "Pesticides, although useful tools to control pests, may pose certain risks to the applicator and other non-target often beneficial organisms. To help reduce such risks and to increase pest control effectiveness, state and federal laws require all applicators to strictly follow all pesticide label instructions and to only use these products on the sites and pests listed on the label.

(2) New York State Environmental Conservation Law (subdivision 1 of section 33-1004) requires individuals who apply lawn care pesticides to their residential properties within this county to post visual notification markers along the perimeter of any treated area of over 100 square feet.

(3) Visual notification markers must be placed to be clearly visible to persons immediately outside the treated perimeter; and

(i) must be posted at least twelve inches above the ground and be at least four inches by five inches in size, and

(ii) must be in place before the pesticide is applied and must instruct persons not to enter the property and not to remove the signs for a period of twenty-four hours.

(iii) such instructions must be printed in letters at least three-eighths of an inch in height.

(4) We recommend that you notify your neighbors prior to the application of pesticides so that they may take precautions to avoid pesticide exposure."

(b) At least forty-eight hours prior to any commercial lawn application the pesticide applicator or business making such application shall supply written notice to occupants of all dwellings or owners or owners' agents or other persons in a position of authority for multiple dwellings and other occupied structures, on abutting property that is within one hundred fifty feet of the site of such application. Such written notice may be provided in any reasonable manner including, but not limited to, mailing, leaving with a responsible adult or in a conspicuous location on the abutting property. Such written notice must be in at least 12 point type and contain at a minimum the following information:

(1) the address of the premises where the application is to take place;

(2) the name, telephone number and pesticide business registration number or pesticide applicator certification identification number of the person applying or supervising the pesticide application;

(3) the specific date of each scheduled application and two alternative dates, if weather or other conditions preclude the original application date;

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

(5) a prominent statement that reads: "This notice is to inform you of a pending lawn care pesticide application to a 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 Pesticide Telecommunications Network at 1-800-858-7378 or the New York State Department of Health Center for Environmental Health information line at 1-800-458-1158."

(c) The owner or owner's agent of any multiple dwelling, or other person in a position of authority over such multiple dwelling, must supply the written notice as described in subdivision (b) of this section to the occupants of such multiple dwelling at least twenty-four hours prior to any proposed commercial lawn application.

(d) The owner or owner's agent of any structure other than a dwelling, or other person in a position of authority over such structure, must

post in a conspicuous location accessible and visible to all individuals who may enter the structure the notice described in subdivision (b) of this section at least twenty-four hours prior to the proposed commercial lawn application.

(e) The prior notification provisions of subdivisions (b), (c) and (d) of this section shall not apply to the following:

(1) the application of anti-microbial pesticides as defined by FIFRA in 7 U.S.C. sections 136 (mm) and 136 Q (h)(2);

(2) the use of an aerosol product with a directed spray, not including foggers or aerosol products which discharge to a wide area, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging or biting insects such as venomous spiders, bees, wasps and hornets;

(3) the use of non-volatile insect or rodent bait in a tamper resistant container;

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

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

(6) the use of boric acid and disodium octaborate tetrahydrate;

(7) the use of horticultural soap and oils that do not contain synthetic pesticides or synergists;

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

(9) the application of a pesticide by direct injection into a plant or the ground;

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

(11) the application of pesticides to the ground or turf of any cemetery;

(12) 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 section and must notify the New York State Commissioner of Health, using a form developed by such Commissioner, which shall include minimally;

(i) the name of the person making such application,

(ii) the Pesticide Business Registration Number or certified applicator identification number of the person making or supervising such application,

(iii) the street address, site location on the treated property and date of the application,

(iv) the product name and United States Environmental Protection Agency registration number for each pesticide applied, and

(v) the reason for such application.

(f) A person or business making commercial lawn applications may provide one or more options to occupants of dwellings to decline further notices of commercial lawn applications to abutting property for the dwelling unit in which the occupant resides. Any such person or business must retain a record of each declination received and shall make all such records available for inspection upon request by the department. Such person or business must provide a reasonable mechanism for any occupant who issues such a declination to rescind the declination. Such rescission shall be effective no later than five business days following receipt by such person or business making commercial lawn applications.

(g) Any person making a residential lawn application to an area of more than one hundred square feet shall post visual notification markers along the perimeter of the area where pesticides are to be applied. Such visual notification 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 residential lawn application; and

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

(h) Visual notification marker posting for residential lawn applications. 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 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 area which is rendered impassible by a fence, wall, hedge or similar device or natural topographic feature; provided, however, every

treated area of over one hundred square feet must be marked by at least two visual notification markers.

(i) On or about January 1 of each year the department shall publish a list of reduced risk lawn care pesticides registered for use in New York State which meet the requirements specified in paragraph (e)(5) of this section.

(j) 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 have concurrent authority with the department to enforce this section and ECL 33-1004. All sanctions, which may only be assessed after providing a hearing or opportunity to be heard, shall be as specified in section 71-2907 of the Environmental Conservation Law. Such county or city must report all alleged violations against commercial applicators to the department within 30 days of the county or city's discovery of the violation. Such county or city must also report within 30 days all final dispositions and resolutions of such violations.

Section 325.42 -325.44 RESERVED.