

## **Section 326.1 Definitions. As used in this Part:**

(a) "Active Ingredient" means:

(1) In the case of a pesticide other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds or other pests.

(2) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or their produce.

(3) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

(4) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(b) "Amended registration" is a change in the formulation or labeling of a pesticide product currently registered by the Department which is either:

(1) a "major change in labeling" as defined in subdivision (n); or

(2) a "minor registration amendment" as defined in subdivision (p).

(c) "Certification identification card" means the identification card issued by the commissioner, pursuant to Environmental Conservation Law, section 33-0905, for the commercial or private application of pesticides or the sale of restricted use pesticides.

(d) "Commercial permit" means the permit issued by the commissioner, pursuant to Environmental Conservation Law, section 33-0901, for the distribution, sale, offer for sale, purchase for the purpose of resale, or possession for the purpose of resale, of a restricted pesticide.

(e) "Commercial permit holder" means the person to whom a commercial permit is issued.

(f) "Commissioner" means the Commissioner of the Department of Environmental Conservation, or his agents.

(g) "Department" means the Department of Environmental Conservation.

(h) "ECL" means the Environmental Conservation Law.

(i) "EPA" means the United States Environmental Protection Agency.

(j) "EPA approved labeling" means the label bearing the EPA "accepted" stamp and all changes made to that label including:

(1) changes required by EPA in the comment letter accompanying the EPA approved label; and

(2) changes made via notification to EPA.

(k) "EPA registration review documents" means all documents prepared or solicited by United States Environmental Protection Agency in its review, analysis and evaluation of an application to

register a pesticide product, including all data evaluation reports, branch reviews, comment and decision-making documents and correspondence with the registrant.

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

(m) "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; or

(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 agriculture 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.

(n) "Major change in labeling" means any new pesticide product or any amended label or labeling for a pesticide product which contains an active ingredient previously registered and which:

(1) results in major change in the use pattern for the active ingredient;

(2) changes the classification of the active ingredient or the product to general use or restricted use;

(3) increases the application rate;

(4) changes the percent concentration of an active ingredient other than an increase due to changes in methods of analysis;

(5) adds a previously-registered active ingredient or deletes any active ingredient; or

(6) any other change which significantly increases the potential exposure of any non-target organism or which increases the potential for a significant impact to humans, property or the environment.

Examples include but are not limited to: addition of aerial application, addition of direct soil application, or addition of a major crop.

(o) "Major change in use pattern" means a change in the general use pattern involving a category of site previously not registered for the active ingredient. Examples of major changes in use pattern include but are not limited to addition of: terrestrial food or non-food use, aquatic food or non-food use, domestic outdoor use, indoor use, forestry use, or greenhouse food or non-food use.

(p) "Minor registration amendment" means any change in registration not comprising a major change in labeling as defined in subdivision 326.1(n).

(q) "New active ingredient" means any active ingredient not in any pesticide product currently registered with the Department.

(r) "Person" means any individual, partnership, association, corporation, organized group of persons whether incorporated or not, private or public authority, State government or agency, political subdivision, governmental agency or any other legal entity.

(s) "Pesticide product" means a pesticide active ingredient or ingredients in a particular formulation, including its related composition, packaging, and labeling. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide. Examples include but are not limited to:

(1) any pesticide product registered or required to be registered by EPA, including:

(i) pesticide products with supplemental distributor registrations, each of which must be registered as a separate product; and

(ii) additional brand names, each of which must be registered separately;

(2) any pesticide product registered for a special local need; and

(3) any product whose use is authorized by an experimental use permit issued by an agency of the United States government.

(t) "Purchase permit" means the permit to be issued by the commissioner, pursuant to Environmental Conservation Law, section 33-0903, for the purchase, possession, or use of a restricted use pesticide. Whenever used in this section and in this Part, the term "purchase permit" also means, as an alternative, a certification identification card.

(u) "Purchase permit holder" means the person to whom a purchase permit is issued.

(v) "Re-treatment" means the reapplication or repeat of an application of a pesticide, whether or not it is the same concentration or formulation as applied initially, to a structure or an area of a structure, provided the application is for the control of the same pest as initially treated.

(w) "Restricted use pesticide" or "restricted pesticide" means any pesticide listed in section 326.2 of this Part according to the criteria of Environmental Conservation Law, section 33-0101(42), or any pesticide whose labeling bears the statement "Restricted Use Pesticide."

(x) "Special Local Need Registration" means a registration issued by the Department under authority of Section 24(c) of the Federal Insecticide, Fungicide and Rodenticide, as amended, and Chapter 40 of the Code of Federal Regulations Section 162.152 as incorporated by reference in Part 320 of this Title, for the following purposes:

- (1) to meet an existing or imminent pest problem within New York State for which the Department has determined that an appropriate pesticide product is not sufficiently available which is registered by the USEPA and the Department; or
- (2) to allow for the limited registration and use of a product for which the full federally labeled use would result in unacceptable impacts to human health or the environment.

Classification of Pesticides - Restricted Use

## **Section 326.2 Restricted pesticides.**

Notwithstanding any statement to the contrary, including statements contained on labels or made by manufacturers, any substance or mixture of substances enumerated in this section, when used as a pesticide as defined in Environmental Conservation Law, article 33, is declared to be restricted to its purchase, distribution, sale, use and possession.

(a) The following may be distributed, sold, purchased, possessed and used only upon issuance of a commercial or purchase permit for any uses listed on the approved label as registered with the New York State Department of Environmental Conservation:

- (1) Acrolein [acryaldehyde]-- all concentrations.
- (2) Acrylonitrile-- all concentrations.
- (3) Aluminum phosphide (Phostoxin)-- all concentrations.
- (4) Antu [alpha naphthyl thiourea]-- all concentrations above 29%.
- (5) Avitrol-- all concentrations. Note: Azinphos methyl -- See (42)  
Guthion
- (6) Azodrin [dimethyl phosphate of 3-hydroxy-N-methyl-cis-crotonamide]-- all concentrations.
- (7) Bidrin [dimethyl phosphate of 3-hydroxy-N, N-dimethyl-cis-crotonamide]-- all concentrations.
- (8) Bomyl [dimethyl 3-hydroxyglutaconate dimethyl phosphate]-- all concentrations.
- (9) Brodifacoum (Talon) [3-(3-(4'-bromo(1,1'-biphenyl)-4-yl)-1,2,3,4-tetrahydro-1-naphthalenyl)-4-hydroxy-2H-1-benzopyran-2-one]-- all concentrations above 0.005%.
- (10) Bromodialone (Maki) [3-(3-(4'-bromo(1,1'-biphenyl)-4-yl) 3-hydroxy-1-phenylpropyl)-4-hydroxy-2H-1-benzopyran-2-one]-- all concentrations above 0.005%.
- (11) Bromethalin [N-methyl-2,4-dinitro-N-(2,4,6-tribromophenyl)-6-(trifluoromethyl) benzeneamine]-- all concentrations above 0.01%.
- (12) Carbon disulfide--all concentrations. No permits will be issued for concentrations greater than 90%.
- (13) Carbofuran (Furadan)-- all concentrations.

- (14) Carbophenothion (Trithion)-- all concentrations above 5%.
- (15) Chlorfenvinphos (Birlane) [2-chloro-1-(2,4-dichlorophenyl)-vinyl diethylphosphate]-- all concentrations above 0.5%. Resin strips such as flea collars, cattle ear tags and other impregnated resin products are not restricted.
- (16) Chlorophacinone (Rozol) [2-((p-chlorophenyl)phenylacetyl)-1,3-indandione]-- all concentrations above 0.05%.
- (17) Chloropicrin-- all concentrations.
- (18) Chlorpyrifos--all formulations labeled for use to control termites by subsurface ground insertion.
- (19) Cholecalciferol (Quintox) [9,10-secocholesta-5,7,10(19)-trein-3 betaol]-- all concentrations above 0.075%.
- (20) Cyanides--calcium and inorganic cyanides--all concentrations; liquid hydrogen cyanide-- all concentrations.
- (21) Cyclohexamide (Actidione)-- all concentrations above 1.3%.
- (22) Daminozide (Alar) [butanedioic acid mono (2,2-dimethyl hydrazide)]-- all concentrations.
- (23) Dasanit [0,0-diethyl 0-(p-(methylsulfinyl) phenyl) phosphorothioate]-- all concentrations.
- (24) Demeton (Systox)-- all concentrations.
- (25) Dinitrophenol-- all concentrations above 0.7%.
- (26) Dinoseb (DNBP) or (DNOSBP) [4,6-dinitro-o-sec-butylphenol and salts]-- all concentrations.
- (27) Dioxathion (Delnav)-- all concentrations.
- (28) Diphacinone [2-diphenylacetyl-1,3-indandione]-- all concentrations above 3%.
- (29) Di-Syston--[0,0-diethyl S-(2-(ethylthio) ethyl) phosphorodithioate]-- all concentrations above 2%.
- (30) DNOC [4,6-dinitro-o-cresol and salts]-- all concentrations.
- (31) DNOCHP [4,6-dinitro-o-cyclohexylphenol and salts]-- all concentrations.
- (32) Dyfonate [0-ethyl S-phenylethylphosphonodi-thioate]-- all concentrations.
- (33) Endosulfan (Thiodan)-- all concentrations.
- (34) EPN [0-ethyl o-(p-nitrophenyl)phenylphosphonothioate]-- all concentrations.
- (35) Ethion [bis(0,0-dimethylthionothiophosphoryl) methane]-- all concentrations above 3% and granular formulations above 6%.
- (36) Ethoprop (Mocap) [0-ethyl S,S-dipropyl phosphorodithioate]-- all concentrations.
- (37) Famphur [0,0-dimethyl 2-(p-(dimethylsufamoyl) phenyl) phosphorothioate]-- all concentrations.
- (38) Fenamiphos (Nemacur) [ethyl-3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate]-- all concentrations.

- (39) Fenthion (Baytex)-- all concentrations above 0.5%.
- (40) Formetanate hydrochloride (Carazol SP) [m((Dimethylamino)methylene amino)-phenyl methylcarbamate monohydrochloride]-- all concentrations.
- (41) Fumarin [3-(alpha-acetonyl-furfuryl)-4-hydroxycoumarin]-- all concentrations above 3%.
- (42) Guthion [0,0-dimethyl S-(4-oxo-1,2,3-benzotriazin-3(4H)-ylmethyl)-phosphorodithioate]-- all concentrations.
- (43) Isofenphos (Oftanol, Amaze) [1-methylethyl-2-((ethoxy(1-methylethyl)amino) phosphinothioyl)oxy)benzoate]-- all concentrations above 2%.
- (44) (Lethane 384) [b-butoxy-b'-thiocyano diethyl ether]-- all concentrations.
- (45) Magnesium phosphide-- all concentrations.
- (46) Methiocarb (Mesurol) [3,5-dimethyl-4-(methylthio) phenyl methylcarbamate]-- all concentrations above 2%.
- (47) Methomyl (Lannate)-[S-methyl-N-((methylcarbamoyl)oxy)thioacetimidate]-- all concentrations above 1%.
- (48) Methyl bromide-- all concentrations.
- (49) Methyl parathion [0,0-dimethyl o-p-nitrophenyl phosphorothioate]-- all concentrations.
- (50) Mexacarbate (Zectran) [4-(dimethylamino)-3,5-xilyl methyl carbamate]-- all concentrations above 2%.
- (51) Monitor [O,S-dimethyl phosphoramidothioate]-- all concentrations.
- (52) Nicotine alkaloid-- all concentrations above 1%.
- (53) Nicotine salts--all concentrations above 40% nicotine expressed as alkaloid.
- (54) Paraquat-- concentrations above 0.2%.
- (55) Parathion-- all concentrations.
- (56) Pentachlorophenol-- all concentration above 5%.
- (57) Permethrin-- all formulations labeled for use to control termites by subsurface ground insertion.
- (58) Phorate (Thimet)-- all concentrations.
- (59) Phosdrin [2-carbomethoxy-1-methylvinyl dimethyl phosphate, alpha isomer]-- all concentrations.
- (60) Phosphamidon-- all concentrations.
- (61) Phosphorus (white or yellow)-- all concentrations.
- (62) Pival [2-pivalyl-1,3-indandione and salts -- all concentrations above 3%.
- (63) PMP, Valone [2-isovaleryl-1,3-indandione and salts]-- all concentrations above 6%.
- (64) Radox [N-N-Diallyl-2-chloroacetamide]-- all concentrations.
- (65) Schradan (OMPA)-- all concentrations.

- (66) Strychnine and its salts-- all concentrations.
- (67) Sulfotepp [0,0,0,0-tetraethyl dithiopyrophosphate-- all concentrations.
- (68) Sulfuryl fluoride (Vikane)-- all concentrations.
- (69) Supracide [0,0-dimethyl phosphorodithioate ester with 4-(mercaptymethyl)-2-methoxy delta 2-1,3,4-thiadiazolin-5-one.
- (70) TEPP [tetraethyl pyrophosphate]-- all concentrations.
- (71) Terbufos (Counter) [S-((1,1-dimethylethyl)thio) methyl)-0,0-diethyl phosphorodithioate]-- all concentrations.
- (72) Vapona (dichlorovos, DDVP) [2,2-dichlorovinyl dimethyl phosphate]-- all concentrations above 1%. Resin strips such as flea collars, bird perches and other impregnated resin products are not restricted.
- (73) Warfarin [3-(alpha-acetonylbenzyl)-4-hydroxycoumarin and its salts]-- all concentrations above 3%.
- (74) Zinc Phosphide-- all concentrations above 2%.
- (75) Zinophos [0,0-diethyl 0-2-pyrazinyl phosphorothioate-- all concentrations.
- (b) The following may be distributed, sold, purchased, possessed or used only upon issuance of a commercial permit or purchase permit for those purposes listed:
- (1) Aldicarb (Temik).
- (i) for use by trained personnel in commercial production of ornamental plants in commercial greenhouses and field grown and nursery plantings on:
- ('a') greenhouse plants or plant beds--for control of aphids, leafminers, thrips, mealybugs, spider mites, white flies;
- ('b') roses--for control of spider mites:
- ('c') dahlias--for the control of aphids, leafhoppers, leafminers, spider mites;
- ('d') lilies, bulbs--for control of nematodes;
- ('e') birch and holly--for the control of aphids, leafminers.
- (ii) In all counties other than Nassau and Suffolk, use on potatoes is permitted under the following restrictions:
- ('a') Application must not be made to any field that was treated with aldicarb in 1985.
- ('b') Application must not be made within 500 feet of a well used for potable water supply or livestock watering.
- ('c') All applications must be made after plant emergence at an application rate not to exceed two pounds of active ingredient per acre.
- ('d') All applications must be made with a certified applicator physically present on the site of application of aldicarb.

('e') By applying aldicarb, any user expressly consents to the taking of water samples from the premises containing the site of application by the department or the registrant at reasonable times and on notice to the owner of the premises. Use on potatoes in Nassau and Suffolk Counties is prohibited by subdivision

('f') of this section.

(2) inorganic arsenic compounds:

(i) Arsenious oxide--may be purchased under permit for formulating baits which shall contain not more than 2.4% of the compounds for commercial areas or 1.5% of the compound for home use to control rodents.

(ii) Calcium arsenate--concentrations above 6% active ingredient expressed as tricalcium arsenate allowable for use only in prescription programs for control of *Poa annua* in turf by permit. Concentrations under 6% unrestricted.

(iii) Lead arsenate--allowable for use in integrated control programs on apples to control plum curculio, codling moth, apple maggot and other chewing insects.

(iv) Magnesium arsenate, Paris green and other inorganic arsenicals not specifically covered--limited to use by permit and only upon review for determining acceptability of proposed use.

(v) Soluble arsenics, including arsenic trioxide (above 1.5%), sodium arsenite (above 2%) and sodium arsenate (above 5%)--restricted, with permits granted only after review of the specific use proposed.

(3) Dicamba (Banvel D)--no restrictions on the substance itself and no permit required. However, in mixtures with fertilizer, the dicamba must be in the acid form and recommended at rates not to exceed 0.125 pounds acid equivalent per acre.

(4) Fluridone [1-methyl-3-phenyl-5-[3-(trifluoromethyl)-phenyl]-4(1H)-pyridinone]:

(i) aqueous suspension formulations may be applied at application rates not to exceed 50 parts per billion.

(ii) pellet formulations may be applied to waters two (2) feet or greater in depth.

(5) Lindane:

(i) for use on trees, shrubs and logs to control lepidopterous and coleopterous borers, long-horned and ambrosia beetles, certain bark beetles, giant hornets, the white pine weevil, pine root collar weevil, pales weevil, balsam twig aphids, white pine aphids and the northern pine weevil;

(ii) for foliar treatment for the control of the honey locust pod gall. This is the only overall foliage treatment allowed;

(iii) for planter box treatment of bean, cucurbit, corn and pea seeds;

and (iv) pastes or ointments containing less than 2.1 percent, anti-flea

collars for pets containing not more than 0.75 percent, and liquid concentrations containing not more than five percent in containers not to exceed 16 ounces (one pint) for the control of certain borers are not restricted.

(6) Sodium fluoroacetate:

(i) for use by registered custom applicators and governmental agencies;

(ii) must be used in locked bait stations, may be used only when the premises or area is vacated, the structure or area must be adequately posted, and all carcasses must be collected and disposed of before the premises or area can be occupied;

(iii) a purchase permit must be secured for each job on which the material is to be used;

(iv) applications for the purchase and use of sodium fluoroacetate must be accompanied by a letter outlining where the material will be used, who will be in charge of the operation, the dates of application, the disposal site of the carcasses, and the reasons for using this material; and

(v) disposal of the carcasses shall be by burial or incineration at approved sites.

(7) Endrin:

(i) for use only in apple orchards for the control of pine vole;

(ii) shall not be used as a preventative. Only orchards with obvious pine vole damage may be treated;

(iii) applicant must have attended an approved training session covering the use of Endrin and pine vole control prior to making application for a permit;

(iv) verification of the infestation may be required by the department's regional office;

(v) may be applied only after the area to be treated has been harvested, including drops; and

(vi) not for use after January 30, 1978.

(8) Oxamyl:

(i) in Nassau and Suffolk Counties use is permitted only on containerized plantings;

(ii) all other uses listed on the registered label are otherwise permitted throughout the State.

(9) Tributyltin: products labeled for aquatic antifouling and preservative uses are restricted as follows:

(i) release of organotin calculated as tributyltin cation may not exceed four micrograms per square centimeter of application area per day;

(ii) container size may not exceed thirty-two fluid ounces;

(iii) application may be only to aluminum hulls or other aluminum parts of vessels; and

(iv) products are not restricted use until such time as they become restricted by the United State Environmental Protection Agency. All measurements must be made according to the American Society for Testing and Materials Standard Test Method for Organotin Release Rates of Antifouling Coating Systems in Sea Water as amended by the United States Environmental Protection Agency June 27, 1986, and evaluated in the manner described in a memorandum dated August 6, 1987 from Dr. Reiter and Dr. Doyle to Dr. Andersen, all of the U.S. Environmental Protection Agency, entitled Review of Tributyltin (TBT) Release Rate Studies with the exception that release of organotin calculated as tributyltin cation shall be measured as an average over the fifteenth to seventieth days following application. See subdivision 326.13(a) for information concerning access to referenced material.

(c) The following may not be distributed, sold, purchased, possessed or used for any purpose.

- (1) Aldrin [Hexachlorohexahydro-endo, exo-dimethanonaphthalene];
- (2) Bandane [polychlorodicylopentadiene];
- (3) BHC [benzene hexachloride-mixed isomers];
- (4) Chlordane [Octachloro-4, 7-methanotetrahydroindane];
- (5) DBCP [dibromochloropropane];
- (6) DDD, TDE [dichloro diphenyl dichlorethane];
- (7) DDT [dichloro dephenyl trichloroethane];
- (8) Dieldrin [Hexachloroepoxyectahydro-endo, exo-dimethanonaphthalene];
- (9) Heptachlor [Heptachlorotetrahydro-4, 7-methanoindene];
- (10) Mercury Compounds;
- (11) Selenites and selenates;
- (12) Silvex [2-(2,4,5-trichlorophenoxy) propionic acid];
- (13) Strobane;
- (14) 2,4,5-T [2,4,5-trichlorophenoxyacetic acid];
- (15) Thallium; or
- (16) Toxaphene

Note: Section 326.2 (d) termite application requirements were revised September 12, 1997 and placed in 6 NYCRR Part 325.

(e) If it is determined by the Commissioner of the New York State Department of Health that an emergency exists affecting the public health or if it is determined by the Commissioner of the New York State Department of Agriculture and Markets or the United States Department of Agriculture that the enforcement of a State or Federal quarantine requires it, the Commissioner of Environmental Conservation may permit the use of any restricted pesticide to cope with the emergency or enforce the quarantine.

(f) The distribution, sale, purchase, possession or use of aldicarb (Temik) for use on potatoes in Nassau and Suffolk Counties is hereby forbidden.

(g) Any product whose label limits use to commercial pesticide applicators only may be distributed, sold, purchased, possessed and used only upon issuance of a commercial permit or certification identification card. Label statements that limit use to commercial pesticide applicators include but are not limited to the following:

(1) Only for sale to and use and storage by commercial pest control operators.

(2) To be applied only by or under the direct supervision of Commercial applicators responsible for insect control program.

(h) Any pesticide labeled for direct application to or in surface waters may be distributed, offered for sale, sold, purchased, possessed or used only by the holder of a valid commercial permit, certification identification card or purchase permit.

### **Section 326.3 Commercial permits, restrictions.**

(a) It shall be unlawful for any person to distribute, sell, offer for sale, purchase for the purpose of resale, or possess for the purpose of resale, any restricted pesticide unless said person shall have applied for, and been issued a commercial permit.

(b) Commercial permits may be issued by the commissioner to persons who, in the regular course of their business, purchase for the purpose of resale, distribute, offer for sale, or sell, restricted pesticides.

(c) It shall be unlawful for a commercial holder to sell restricted pesticides except to a purchase permit or commercial permit holder or except under the provisions of section 326.8 (e) of this Part.

(d) Only the holder of a commercial permit may purchase restricted pesticides for resale without being required to obtain and present a purchase permit.

(e) Permits shall not be valid for more than two years.

(f) The commercial permit holder shall maintain all records pertaining to the acquisition, sale or disposal of restricted pesticides for a period of two years and shall make available said records for inspection by the commissioner. Such records shall be kept in a manner and on such forms as the commissioner may prescribe.

### **Section 326.4 Commercial permit applications.**

(a) An application for a commercial permit shall be submitted to an agent or office designated by the commissioner. Such application shall

be made in a manner and on a form prescribed by the commissioner and shall include such information, statements or certification as the commissioner shall require.

(b) Upon receipt of an application, the commissioner shall:

(1) examine the application; and

(2) issue the commercial permit requested therein, imposing whatever restrictions or conditions on the permit he deems appropriate in order to protect the public interest; or

(3) refuse to issue the commercial permit requested therein.

### **Section 326.5 Denial of an application or revocation of a commercial permit.**

The commissioner may deny an applicant for a commercial permit or, at any time after giving notice, revoke a commercial permit already granted to a person upon one or more of the following grounds:

(a) It has been determined that any statement in the application or condition or assumption upon which it was issued is or was false or misleading.

(b) It is determined that the applicant or permit holder does not have adequate facilities for the storage and distribution of restricted pesticides.

(c) It is determined that the applicant or permit holder has engaged in fraudulent business practices relating to the sale and distribution of pesticides.

(d) It is determined that the applicant or permit holder has failed to comply with any pertinent provision of the Environmental Conservation Law or rules and regulations promulgated pursuant thereto.

(e) It is determined that the applicant or permit holder has failed to demonstrate that he has sufficient knowledge and/or experience concerning the proper use and application of pesticides.

(f) It is determined that permit holder has failed to give accurate and complete information when applying for a permit or in reporting sales or deliveries of restricted pesticides.

(g) It is determined that a permit holder has failed to supply information required upon request of the commissioner.

(h) It is determined that a permit holder has failed to maintain and have available for inspection all records required by the commissioner.

(i) It is determined that the permit holder has failed to provide adequate storage facilities for his inventory of restricted pesticides.

(j) It is determined that a permit holder has failed upon request of the commissioner to permit or aid in the inspection of storage facilities or in the taking of samples of any restricted pesticides under the control of the permittee or his authorized agent.

## **Section 326.6 Procedure by commercial permit holders upon sale of restricted pesticides.**

Upon the sale by a commercial permit holder of a restricted pesticide to a purchase permit holder the procedure for cancellation as provided in section 326.10 of this Part shall be followed.

## **Section 326.7 Purchase permits, restrictions.**

(a) It shall be unlawful for any person to purchase or possess, except for the purpose of resale pursuant to section 326.3(d) of this Part, or use any restricted pesticide unless said person shall have applied for and been issued a purchase permit or who shall have purchased the restricted pesticide in accordance with the provisions of section 326.8(e) of this Part.

(b) Purchase permits may be issued by the commissioner to persons who regularly use and apply pesticides as a significant part of their gainful employment or livelihood as determined by the commissioner. Such persons may include, but not be limited to, Federal, State, county and municipal officers responsible for pest control, registered custom applicators of pesticides, structural pest control operators, farmers, orchardists, nurserymen, arborists, Christmas tree growers, veterinarians, personnel responsible for pest control operation in industrial establishments, golf courses, camps, schools, hospitals, correctional facilities, jails, prisons, parks, highways, railroads and utilities.

## **Section 326.8 Purchase permits, applications.**

(a) Applications for a purchase permit shall be submitted to an agent or office designated by the commissioner. The application shall be made in a manner and on a form prescribed by the commissioner and shall provide such information, statements and certification as the commissioner shall require.

(b) Only one application shall be submitted for the purchase, possession and use of all substances listed in section 326.2(a) of this Part.

(c) A separate application must be filed for each separate use of a substance as listed below:

(1) Aldicarb (Temik)--for use by trained personnel in commercial production of ornamental plants in commercial greenhouses and field grown and nursery plantings on:

- (i) greenhouse plants or plant beds for control of aphids, leafminers, thrips, mealybugs, spider mites, white flies;
- (ii) roses for control of spider mites;
- (iii) dahlias--for the control of aphids, leaf-hoppers, leafminers, spider mites;
- (iv) lilies, bulbs--for the control of nematodes; and
- (v) birch and holly--for the control of aphids, leafminers.

(2) Inorganic arsenic compounds:

- (i) Arsenious oxide--may be purchased under permit for formulating baits which shall contain not more than 2.4% of the compounds for commercial areas or 1.5% of the compound for home use to control rodents.
- (ii) Calcium arsenate--concentration above 6% active ingredient expressed as tricalcium arsenate allowable for use only in prescription programs for control of *Poa annua* in turf by permit. Concentration under 6% unrestricted.
- (iii) Lead arsenate--allowable for use in integrated control programs on apples to control plum curculio, codling moth, apple maggot and other chewing insects.
- (iv) Magnesium arsenate--Paris green and other inorganic arsenics not specifically covered--limited to use by permit and only upon review for determining acceptability of proposed use.
- (v) Soluble arsenics, including arsenic trioxide (above 1.5%), sodium arsenite (above 2%), and sodium arsenate (above 5%)-- restricted with permits granted only after review of the specific use proposed.

(3) Lindane:

- (i) for use on trees, shrubs and logs to control lepidopterous and coleopterous borers, long-horned and ambrosia beetles, certain bark beetles, giant hornets, the white pine weevil, pine root collar weevil, pales weevil, balsam twig aphids, white pine aphids, and northern pine weevil;
  - (ii) for foliar treatment for the control of the honey locust pod gall; and
  - (iii) for planter box treatment of bean, curcubit, corn and pea seeds.
- Pastes or ointments containing less than 2.1%, anti-flea collars for pets containing not more than 0.75% and liquid concentrations containing not more than 5% in containers not to exceed 16 ounces (one pint) for the control of certain borers are not restricted.

(4) Sodium fluoroacetate:

- (i) for use by registered custom applicators and governmental agencies;
- (ii) purchase permit must be secured for each job on which the material is to be used;
- (iii) permit application for purchase and use must be accompanied by a letter outlining where the material will be used, who will be in charge

of the operation, the dates of application, the disposal site of the carcasses and the reasons for using this material;

(iv) must be used in locked bait stations, may be used only when the premises or area is vacated, the structure or area must be adequately posted, and all carcasses must be collected and disposed of before the premises or area can be occupied; and

(v) disposal of the carcasses shall be by burial or incineration at approved sites.

(5) Aquatic pesticides: Any pesticide labeled for direct application to or in surface waters, except any pesticide for which the application would require an aquatic pesticide permit under regulations promulgated pursuant to section 15-0313(4) of the Environmental Conservation Law. One application may be filed for the total amount of a pesticide to be applied during a calendar year in each body of water.

(d) Upon receipt of an application, the commissioner shall:

(1) examine the application; and

(2) issue the purchase permit requested therein, imposing whatever restrictions or conditions on the permit he deems appropriate in order to protect the public interest; or

(3) refuse to issue the purchase permit requested therein.

### **Section 326.9 Denial of an application or revocation of a purchase permit.**

The commissioner, at any time after giving notice, may deny an applicant a permit or revoke a permit already granted to a person upon one or more of the following grounds:

(a) It is determined that any statement in the application or condition or assumption upon which it was issued is or was false or misleading.

(b) It is determined that the applicant or permit holder failed to justify his need for the quantity and types of restricted pesticides requested.

(c) It is determined that the applicant or permit holder stored, applied, used or disposed of any pesticide contrary to the registered labeled usage or contrary to the conditions specified in his permit.

(d) It is determined that the applicant or permit holder has failed to comply with any provisions of the Environmental Conservation Law or rules and regulations promulgated pursuant thereto.

(e) It is determined that the applicant or permit holder has failed to demonstrate that he has sufficient knowledge and/or experience concerning the proper use, application and disposal of pesticides.

(f) It is determined that a permit holder has failed to supply information required upon request of the commissioner.

(g) It is determined that a permit holder has failed to maintain and have available for inspection all records by the commissioner.

- (h) It is determined that the permit holder has failed to provide adequate storage facilities for his inventory of restricted pesticides.
- (i) It is determined that the permit holder has failed upon request of the commissioner to permit on-site inspection of equipment used and methods of application of restricted pesticides, or to permit the inspection or taking of samples of any restricted pesticides, or lands, or crops under the control of the permittee or his authorized agent upon which a restricted pesticide has been used.

### **Section 326.10 Cancellation procedure.**

- (a) A commercial permit holder shall cancel each purchase of a substance listed in section 326.2(a) of this Part by recording the required information on a suitable form at the time each purchase is made by a purchase permit holder, for which purposes a sales invoice will suffice.
- (b) Cancellation of a purchase permit required for a substance listed in this section shall be as follows:
  - (1) Purchase of total amount.
    - (i) If a purchase permit holder purchases the total amount of the authorized substance at one time, he shall present his purchase permit to the commercial permit holder making the sale who shall, after recording the required information on the sales invoice and on the back of the purchase permit, detach and retain stub 2 of the permit.
    - (ii) When the total of partial purchases equals the total amount authorized which shall be the authorization required for the possession and use of the restricted substance.
  - (2) Partial purchases.
    - (i) If a purchase permit holder makes a partial purchase of the authorized substance, he shall present his purchase permit to the commercial permit holder making the sale who shall, at the time each such partial purchase is made, record the required information on the sales invoice and on the back of the permit issued for that substance.
    - (ii) When the total of partial purchases equal the total amount authorized the purchaser under a permit, the commercial permit holder making the last authorized sale, in addition to recording the required information on the sales invoice and on the back of the permit shall detach and retain stub 2 of the permit.
    - (iii) The purchase permit holder shall retain stub 1 of the purchase permit which shall be the authorization required for the possession and use of the restricted substance.
  - (3) Annual sales report.
    - (i) A commercial permit holder shall keep a separate sales invoice record for each purchase permit holder on an annual basis. These

records shall be retained by the commercial permit holder and kept for a minimum of three years.

(ii) An annual report showing the total sales of each restricted substance listed in section 326.2(a) of this Part, and the total sales of each restricted substance listed in section 326.2(b) of this Part, by formulation shall be mailed or delivered by the commercial permit holder, with such other forms, reports or information as the commissioner shall require to the department at its main office in Albany, N.Y., no later than the 15th business day following the last day of the calendar year for which the report is being submitted.

(iii) Stub 2 shall be attached to the commercial permit holder's annual report and mailed or delivered to the department with the said report as provided in subparagraph (ii) of this paragraph.

(c) For any sales to nonpermit holders of emulsifiable chlordane in concentrations not exceeding four pounds per gallon and in packages not exceeding one gallon of chlordane in soil injection cartridges made prior to or during 1984, the commercial permit holder must retain the original signature sheets as a record of sale. The commercial permit holder must retain the signature sheets for a minimum of three years from the date of purchase.

(1) No later than midnight January 15, 1985, the commercial permit holder must report to the department at 50 Wolf Road, Albany, New York the total quantity of chlordane sold the previous year to persons other than purchase permit holders and certified applicators. This report must show total quantities sold in each allowable formulation.

(2) Signature sheets and invoices will be subject to periodic inspections by the commissioner until December 31, 1987.

### **Section 326.11 Storage.**

No person shall store any restricted pesticide or empty containers thereof in such a manner as may be injurious to human, plant or animal life or to property or which unreasonably interferes with the comfortable enjoyment of life and property throughout such areas of the State as shall be affected thereby.

### **Section 326.12 Research.**

The commissioner, in a manner prescribed by him, may permit the purchase, possession and use of any restricted pesticide listed in section 326.2 of this Part for research purposes.

### **Section 326.13 Referenced Material.**

The technical material incorporated by reference in 326.2(b)(8) is available for inspection and copying at Room 530 of the Department's offices at 50 Wolf Road, Albany, New York 12233-4756, or can be directly obtained from Special Review Branch, Registration Division, TS-767C, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.  
Registration of Pesticides

## **Section 326.14 General Requirements for Pesticide Product Registration.**

(a) Every pesticide product which is used, distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall first be registered with the commissioner, except a pesticide product in the possession of any carrier while lawfully engaged in transporting a pesticide within the state, if such carrier shall upon request by the Department, permit the commissioner or his/her designated agent to copy all records showing the transactions in and movement of the pesticide product.

(b) Prior to the use, distribution, sale, offer for sale within this state or delivery for transportation or transportation in intrastate commerce or between points within this state through any point outside this state of any pesticide product whose use is authorized by an experimental use permit (EUP) issued by the EPA or required to be issued by EPA, such experimental pesticide product must be registered by the Department. Such registration is required whether the product is sold or given free to cooperators.

(c) Anyone may file an application for registration with the Department with the concurrence of the federal registrant.

(d) A non-refundable application fee as provided in Environmental Conservation Law (ECL) section 33-0705 must accompany every pesticide product registration application package.

(e) Registrants or applicants for registration must notify the Department of any amended registration for pesticide products registered by the Department or for which an application is pending with the Department. Major changes in labeling require a new registration as further described in subdivisions 15 and 17 of this section. Minor registration amendments must be filed with the Department as further described in section 326.18. Except as described in subdivision 326.19, all amended labeling must be accepted by the Department as an amendment to the registration of the product before the pesticide product can be used, distributed, sold, offered for sale within this state, or delivered for transportation or

transported in intrastate commerce or between points within this state through any point outside this state.

(f) Registrants of any pesticide product registered with the Department, or applicants for pesticide product registration must file any factual information regarding unreasonable adverse effects of the pesticide product or any of its ingredients with the Department within thirty (30) days after the registrant, or applicant, first possesses or knows of reportable information. This requirement applies to all information required to be filed with USEPA under 40CFR Part 159 (effective June 16, 1998) as incorporated by reference in Part 320 of this Title. Information filed with USEPA prior to the effective date of this Part is not routinely required to be submitted. However, the commissioner may request, on an individual basis, reports submitted to EPA prior to the effective date of this Part. A summary of the information may be submitted in a form prescribed by the commissioner. The commissioner may request complete information, on an individual basis, for any report.

(g) Pesticide registration applicants or registrants of pesticide products registered in New York State who hold federal registrations that are conditional may be required to submit to the Department at the time of submission to EPA, all information required by EPA as a condition of that registration.

(h) In addition to the information required to be submitted immediately to the Department under subdivision 326.14(g), the Department may request at any time, information deemed necessary to support the continued registration of any pesticide product. Examples of such information include but are not limited to: product effectiveness data, indoor air residues, and surface residues.

(i) Product registrations are not transferable. If a product changes ownership, the new owner must file a new registration application and new registration fees. Change in ownership is not an amended registration. Change in company name, not involving a change of ownership, does not require a new registration or fees, but will be treated as an amended registration. Changes in stock ownership of a corporation owning a product do not constitute a change in ownership of the product.

(j) If a pesticide product is being phased out and a new pesticide product with the same brand name will be marketed simultaneously, both pesticide products must be registered for as long as the pesticide products remain in the channels of trade. This includes the circumstance where two pesticide products have the same brand name with different EPA registration numbers.

## **Section 326.15 Application Requirements for All Pesticide Product Registrations.**

(a) A separate application must be submitted for each of the following types of registration. All products within each type may be submitted together in one application.

- (1) Registration of pesticide products with an active ingredient not previously registered by the Department;
- (2) Initial registration or amended registration involving a major change in labeling for a previously registered active ingredient;
- (3) Initial registration of pesticide products containing active ingredients currently registered by the Department and not involving a major change in labeling;
- (4) Amendment to an existing registration requiring a new registration application for New York State, i.e., product name change, EPA registration number change, or change in ownership of the pesticide product;
- (5) Renewals of registrations;
- (6) Special local need registrations; and
- (7) Products labeled under an experimental use permit issued by an agency of the United States Government.

(b) Application packages must be clearly identified as to the registration type listed in subdivision (a) of this section.

(c) The applicant must submit, in intact physical condition and in the format prescribed by the commissioner, the following information, forms and fees with all types of registration applications:

- (1) a completed pesticide registration application form listing the names and EPA registration numbers of each pesticide product proposed for registration;
- (2) a completed Department product data sheet for each pesticide product to be registered;
- (3) one copy of the most current EPA approved labeling for each pesticide product to be registered. EPA approved labeling consists of an EPA stamped "accepted" label including any comment letter from EPA, letter of amendment via notification, or EPA policy notice. If the product proposed to be registered is a supplemental distributor product, the applicant must submit, or have submitted on their behalf, the EPA approved labeling for the basic product upon which the supplemental distributor label is based;
- (4) three copies of the final printed labeling for each pesticide product to be registered. Accurate facsimiles are acceptable where it is impractical to submit an actual label. A reduced size copy or facsimile must be submitted if any label exceeds 11 by 17 inches. If use

directions vary on different container sizes, the applicant must submit labels for each size;

(5) a copy of the final label text on electronic media (such as computer disk), if requested by the commissioner;

(6) a copy of the current EPA confidential statement of formula on the appropriate federal form for each pesticide product;

(7) a copy of the U.S. EPA Notice of Pesticide Registration; and

(8) the registration application fee as required by law, except that a registration application fee is not required for minor registration amendments as defined in subdivision 326.1(p).

### **Section 326.16 Additional Application Requirements for Pesticide Product Registrations Containing a New Active Ingredient.**

In addition to the information required for registration in section 326.15, an applicant must submit the following information for pesticide products containing an active ingredient not contained in a pesticide product previously registered by the Department:

(a) a statement identifying the pesticide product as containing a new active ingredient;

(b) four copies of the complete index of studies and other information submitted in support of the EPA registration in the format specified by the Department;

(c) four copies of all EPA registration review documents as defined in 326.1(k). It is recognized that not all of these documents may be available for products registered with the EPA prior to 1986;

(d) four copies of data summary reports for all studies;

(e) four copies of the EPA approved labeling;

(f) four copies of the Material Safety Data Sheet (MSDS);

(g) four copies of completed summary data forms in the format specified by the Department;

(h) six copies of the final printed label;

(i) three copies of validated analytical methodologies provided in a separate volume for measuring active ingredients and metabolites or degradation products of concern in the following media:

(1) soil and water for products with outdoor uses;

(2) air and surfaces for products with indoor uses; and

(3) any other media if specifically requested; and

(j) if requested, analytical standards for the active ingredient and any metabolites or degradation products of concern.

## **Section 326.17 Additional Application Requirements for New and Amended Pesticide Product Registrations for which a Major Change in Labeling is Proposed.**

In addition to the information required for registration in section 326.15, the applicant must submit the following information for a new pesticide product for which a major change in use pattern is proposed for an active ingredient contained in a product currently registered by the Department, or for a major change in labeling of a pesticide product currently registered by the Department:

- (a) a statement identifying the pesticide product as involving a major change in labeling;
- (b) four copies of the complete index of studies and other information submitted in support of the EPA registration amendment, including the EPA Guideline Reference Number and EPA assigned MRID number where applicable;
- (c) four copies of all EPA registration review documents as defined in Subdivision 326.1(m) except that these shall not be required of products registered with the EPA prior to 1986 relating to the change;
- (d) four copies of data summary reports for all studies relating to the change;
- (e) four copies of the EPA approved label and final printed label;
- (f) four copies of the Material Safety Data Sheet (MSDS);
- (g) any other data, supporting information or EPA review documents which the Department determines during the completeness determination period are relevant to the pending application;
- (h) completed summary data forms in the format specified by the Department;
- (i) three copies of validated analytical methodologies provided in a separate volume for measuring active ingredients and metabolites or degradation products of concern in the following media:
  - (1) soil and water for products with outdoor uses;
  - (2) air and surfaces for products with indoor uses; and
  - (3) any other media if specifically requested; and
- (j) if requested, analytical standards for the active ingredient and any metabolites or degradation products of concern.

## **Section 326.18 Filing and Acceptance of Registration Amendments.**

- (a) Except as specified in section 326.19, all amendments to any pesticide product registered with the Department involving minor

registration amendments as defined in subdivision 326.1(p) must be filed with and accepted by the Department as an amendment to the registration of the product prior to the use, distribution, sale or offer for sale, within this state, or delivery for transportation or transportation in intrastate commerce or between points within this state through any point outside this state of the pesticide product.

(b) The registrant must submit three copies of the final printed labeling or accurate, legible facsimile. All changes must be noted or highlighted on the label.

(c) If the change involves an amendment to the EPA registration, the EPA approved amended label must also be filed.

(d) If the amendment involves a change in the federal Confidential Statement of Formula (CSF), the new CSF must be filed.

(e) If the amended label is for a supplemental distributor product, the distributor label must be identical to the label for the basic registration in all respects, except that:

(1) the product name of the distributor product may be different;

(2) the name and address of the distributor may appear instead of that of the federal registrant;

(3) the registration number of the registered product must be followed by a dash, followed by the distributor's company number assigned by EPA;

(4) the establishment number must be that of the final establishment at which the product was produced; and

(5) specific claims may be deleted, provided that no changes would be necessary in precautionary statements, use classification, or packaging of the product.

### **Section 326.19 Minor Registration Amendments not Requiring Approval Prior to Sale or Distribution.**

(a) Amendments to products registered with the Department may be made by notification to the Department providing:

(1) the modifications to the federal registration meet the EPA criteria for notification under federal regulations and policies; and

(2) the modification does *not* involve the addition of an alternate or additional brand name;

(b) The following procedure must be followed for amending a Department registration via notification:

(1) the registrant must submit the following documents:

(i) a copy of the EPA Application for Registration Amendment indicating that the change is being made via notification;

- (ii) a copy of the transmittal letter to EPA bearing the certification statement required by EPA that the change meets the criteria for change via notification; and
  - (iii) three copies of the final printed labeling or accurate, legible facsimile. All changes must be noted or highlighted on the label.
- (2) the Department will notify the registrant if it determines that approval under section 326.18 is required. If so notified, the registrant must wait for approval prior to sale or distribution in the state.
- (3) distribution may begin on the 31st day after receipt by the Department of notice of change via notification unless notified by the Department that approval under Section 326.18 is required.
- (4) the Department will return, as soon as is possible, a copy of the label stamped "Accepted Via Notification - Label Not Reviewed".
- (c) The following types of label amendments may be made without any notification to the Department and, therefore, does not require acceptance prior to the use, distribution, sale or offer for sale, within this state, or delivery for transportation or transportation in intrastate commerce or between points within this state through any point outside this state of the pesticide product:
- (1) correction of typographical and printing errors in labeling unless, as a result of a label review by the Department, the registrant has been requested to correct an error and submit the corrected label;
  - (2) changes in net contents providing that no other label changes are necessary under federal or state requirements;
  - (3) use of metric units in addition to standard U.S. units;
  - (4) redesign of label format that does not modify approved label text and which is consistent with federal and state requirements; and
  - (5) revision, addition, or deletion of non-mandatory label elements, such as:
    - (i) the DOT hazard diamond;
    - (ii) State-required analysis of a fertilizer product;
    - (iii) lot or batch codes; and
    - (iv) date of manufacture or label approval.

### **Section 326.20 Additional Application Requirements for Pesticide Product Registrations for Supplemental Distributor Labels.**

- (a) In addition to the information required to be provided in section 326.15, applications to register supplemental distributor pesticide products must provide the following information:
- (1) a copy of the signed EPA application for supplemental registration of a distributor as filed with EPA by the basic registrant; and

(2) a statement signed by the basic EPA registrant for the product stating that the final label as offered for sale is identical to the EPA stamped accepted label or allowed variations. The distributor label submitted must be identical to the basic registration label in all respects except for differences authorized under subdivision 326.18(e).

(b) If there are any differences between the distributor label as submitted and the EPA accepted label for the basic registration, they must be specifically identified.

### **Section 326.21 Special Local Need Registrations.**

In addition to the information required in section 326.15, applications to register a product for a special local need must provide the following information:

(a) proposed label or supplemental labeling;

(b) EPA application for notification of state registration of a pesticide to meet a special local need on the appropriate federal form;

(c) the following data supporting the proposed use:

(1) efficacy data;

(2) crop residue data, if the use is a food or feed use and involves an additional crop, or if there is a change in application to a food or feed crop that could result in increased crop residues;

(3) human health effects and toxicology data, if the use involves a change in use pattern or could result in increased exposure to humans;

(4) environmental fate data, if the use involves a change in use pattern, or if the proposed use represents a significant increase in the dosage rate for an existing federally labeled use; and

(5) data on impacts to non-target organisms, if there is a change in use pattern to one involving outdoor use or if the use could result in increased exposure to non-target organisms; and

(d) a detailed justification of the special local need including:

(1) a discussion of why existing federally registered products will not meet the need; and

(2) a discussion of the nature of the state or sub-state need that cannot be met by an EPA registration.

### **Section 326.22 Experimental Use Products.**

(a) All experimental use pesticide products whose use is authorized by an experimental use permit (EUP) issued by the EPA or required to be issued by EPA must be registered with the Department in accordance

with subdivision 326.14(b). Such registration is required whether the product is sold or given free to cooperators.

(b) Experimental products not requiring the issuance of a federal experimental use permit under EPA criteria specified in federal regulations are not required to be registered. However, the following conditions apply:

(1) for experimental programs conducted on property owned or managed by registrants or recognized research institutions, no permit or notification requirements apply.

(2) for experimental programs conducted on property other than that owned or managed by registrants or recognized research institutions, the person proposing to conduct the program must notify the Department with the details of the program at least 30 days prior to the date of the proposed application.

(c) In addition to the requirements of section 326.15, an applicant for registration of an experimental use product must provide the following information:

(1) a copy of the federal permit including the experimental label;

(2) a copy of the proposed experimental program for New York including amounts and acreage of use, name, address, and phone number of the person supervising the program in New York and a list of cooperators; and

(3) data summaries of toxicology, environmental toxicology, and environmental fate data for the active ingredient, if such data has not already been submitted to the Department.

(d) The Department must be notified a minimum of five business days in advance of application of EUP pesticides of any changes in the list of cooperators previously approved.

### **Section 326.23 Registration Application Reviews and Determinations.**

(a) All applications and filings will be reviewed for completeness. A determination of completeness will be made within sixty (60) days from the date of receipt by the Department. The applicant will be notified in writing of the determination of completeness or incompleteness. If the application or filing is determined to be incomplete, the notice will include a statement of the reasons for the determination. An incomplete application may be returned to the applicant with the notice. The resubmission or submission of additional information shall commence a new review of completeness.

(b) If a determination of completeness is not made within sixty (60) days of receipt, the application will be deemed complete as of the 61st day.

(c) Upon determination that an application is complete, the Department will initiate a technical review of the data submitted as part of the application, in order to evaluate the potential for adverse impacts to human health and the environment which may occur when the product is used in accordance with the label directions. The commissioner will weigh the potential for human health and ecological risks against the potential benefits that could accrue from the use of the product when making a decision whether or not to approve the registration.

(d) Upon completion of the review the Department will issue or deny the registration, or approve or disapprove amended labeling within the following periods, calculated from the date of the completeness determination:

- (1) one hundred and fifty (150) days for applications for a new active ingredient or a major change in labeling;
- (2) ninety (90) days for applications not involving a new active ingredient or a major change in labeling;
- (3) sixty (60) days for applications for a special local need;
- (4) thirty (30) days for amended labeling not involving a major change in labeling; or
- (5) sixty (60) days for experimental use permit (EUP) product applications.

(e) The commissioner may place any conditions on the registration of any product that are deemed necessary to prevent damage or injury to health, property and wildlife. Conditions may include, but are not limited to:

- (1) the submission of additional data;
- (2) classification as restricted use;
- (3) record keeping or reporting requirements; and
- (4) any other use conditions deemed necessary.

(f) Compliance with the conditions of registration is required for the continued registration of the pesticide.

(g) If registration or approval of amended labeling is not granted or denied within the prescribed time period, the applicant may submit a request to grant or deny the registration, by means of certified mail, return receipt requested, addressed to the Commissioner of Environmental Conservation, Attention: Director, Division of Solid & Hazardous Materials, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233-7250. If the registration is not granted or denied within thirty (30) days following the receipt of such request, the registration shall be deemed granted, except that for applications involving a special local need, the application will be deemed granted if a decision is not issued within ten

(10) days. Any denial of registration or disapproval of amended labeling will specify the grounds for denial.

(h) Any time period specified in this part may be extended with the consent of the applicant.

### **Section 326.24 Pesticide Product Registration Renewals.**

(a) Applicants for renewal must file an application with the Department at least thirty (30) days prior to the registration expiration date of the pesticide product, as shown on the registration certificate.

(b) The applicant will be notified of incomplete applications and given adequate opportunity to provide the information to complete the application prior to the expiration date.

(c) If the application was submitted as required in subdivision (a), and a complete renewal application is on file with the Department on or before the registration expiration date, the pesticide product registration will continue until a registration renewal decision is issued and takes effect. If a renewal application is not complete by the expiration date, then the registration will expire on the stated expiration date.

(d) An applicant for renewal of registration must submit the following information, if the information has not been previously provided to the Department:

(1) a copy of the confidential statement of formula on the appropriate federal form;

(2) a copy of the EPA stamped "accepted" label including any comment letter from EPA, letter of amendment via notification, or EPA policy notice;

(3) if the pesticide product is a supplemental distributor product label, a copy of the EPA notice of supplemental registration of distributor form.

(4) if the renewal application is for a special local need registration, a statement of current justification and support data.

(5) if the application is to renew a registration for an experimental product, the experimental use permit as amended by the EPA.

(e) Special local need registrations can be renewed only if the Department determines that the special local need continues to exist.

(f) Experimental products can only be renewed if the federal experimental use permit is currently in effect.

### **Section 326.25 Provision for Requesting Additional Information.**

- (a) At any time during the review of an application to register a pesticide, the commissioner may request from the applicant reasonable additional information with regard to any matter contained in the application when such additional information is necessary for the commissioner to make a decision on the registration application.
- (b) If any additional information is requested after a notice of completion has been issued, it will not extend the time period within which a registration decision must be made.

### **Section 326.26 Emergency Exemptions from Registration Requirements.**

- (a) Anyone may petition the commissioner to request that the EPA issue an emergency exemption from the requirement of federal and state registration.
- (b) An applicant petitioning the commissioner to request an emergency exemption must provide the following information which is identical to the information required by 40CFR Part 166.20(a) as incorporated by reference in Part 320 of this Title:
- (1) identity of contact persons;
  - (2) description of the pesticide;
  - (3) description of the proposed use;
  - (4) alternative methods of control;
  - (5) effectiveness of proposed use;
  - (6) discussion of residues for food uses;
  - (7) discussion of risk information;
  - (8) coordination with other affected state or federal agencies;
  - (9) notification of registrant or basic manufacturer;
  - (10) description of proposed enforcement program; and
  - (11) information on repeated use.
- (c) Petitions must be submitted to the Department at least one hundred and five (105) days prior to the date on which use is proposed to commence.
- (d) The Department will inform the person submitting a petition within thirty (30) days of receipt whether the materials submitted are complete.
- (e) Petitions that have been determined to be complete, will be submitted by the Department to the EPA at least sixty (60) days prior to the date on which use is proposed to commence.
- (f) Where an emergency situation arises too late to meet the time lines specified in the statute, the Department will consider granting a crisis exemption as authorized under federal law subject to the limitations prescribed by federal law. A request for a crisis exemption must be

submitted to the commissioner and must be accompanied by the following information:

- (1) adequate justification that an emergency condition exists;
- (2) explanation of the reason that the emergency condition was not able to be predicted in time to meet the time lines specified in the statute; and
- (3) all the information specified in subdivision (b).