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## **ENVIRONMENTAL PROTECTION**

### **COMPLIANCE AND ENFORCEMENT**

#### **PESTICIDE CONTROL PROGRAM**

##### **Pesticide Control Code**

**Readoption with Amendments: N.J.A.C. 7:30**

Proposed: December 3, 2007, at 39 N.J.R. 5010(a)

Adopted: by Lisa P. Jackson, Commissioner,  
Department of Environmental Protection

Filed: \_\_\_\_\_, as R. 2008 d. \_\_\_\_\_, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:1D-1 et seq. and 13:1F-1 et seq., particularly 13:1F-4.

DEP Docket Number: 23-07-10/546

Effective Date:

Expiration Date:

The Department of Environmental Protection (Department) is readopting, with amendments, the Pesticide Control Code rules, N.J.A.C. 7:30, which govern the manufacturing, labeling, registration, and classification of pesticides; the registration of pesticide dealers and pesticide dealer businesses; the registration of applicators of pesticides; and the distribution, use, application, storage, handling, transportation, and disposal of pesticides in the State. The Department is adopting amendments to definitions, notification and recordkeeping requirements, and fees.

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**Summary of the Hearing Officer's Recommendation and Agency Response:**

A public hearing was held on Wednesday, January 9, 2008 at the New Jersey Department of Environmental Protection's Pesticide Control Program office, 22 South Clinton Avenue, Station Plaza 4, Third Floor, Trenton, New Jersey. David Munn, Supervising Environmental Specialist served as the hearing officer. Eight people attended the hearing and five people testified. After reviewing the comments received during the public comment period, the hearing officer has recommended that the proposal be adopted, with the changes described below in the Summary of Public Comments and Agency Responses. The Department accepts the hearing officer's recommendation.

The hearing record is available for inspection in accordance with applicable law by contacting:

New Jersey Department of Environmental Protection  
Office of Legal Affairs  
Attn: DEP Docket Number: 23-07-10/546  
P.O. Box 402, Trenton, NJ 08625-0402

**Summary of Public Comments and Agency Responses:**

The public comment period for this proposal closed on February 1, 2008. The following persons timely submitted oral and/or written comments on the proposal.

1. Debbie Akerstrom
2. James Albrecht
3. James Avens, Jr.
4. Anthony R. Bucco, New Jersey Senate

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5. Tom Byrne, Union Twp. Dept. of Public Safety
6. Tom Castronovo, Executive and Publisher, Gardener News
7. Michael J. Deo
8. Mary Derstine
9. Evan Dickerson, Executive Director, Board of the Professional Landscape Alliance of New Jersey
10. Gary P. DiNardo, Mayor, Township of Warren
11. Leonard Douglen, Executive Director, New Jersey Pest Management Association
12. Chris Endris
13. Reynard Ezel
14. Constance Fortenbaugh
15. Michael F. Gross
16. Douglas L. Guthrie, Sr., Monmouth County Mosquito Extermination Commission
17. Gene Harrington, Director, Government Affairs, National Pest Management Association
18. Bonnie Joachim
19. Jeanette Johnson, Garden Club of New Jersey
20. Margaret M. Kerstner
21. Susan F. Kessel, President, Chatham Print and Design
22. Glenn Levinson, Associated Executives of Mosquito Control
23. Michael Maddaluna, Superintendent, Somerset County Vocational and Technical Schools
24. Charles Malatesta
25. Robert C. Marino

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26. Kristian McMorland, Morris County Mosquito Extermination Commission
27. Christine Musa, Director, Warren County Mosquito Commission
28. Teresa Niedda, Farm Worker Health and Safety Institute
29. Jane Nogaki, Pesticide Program Coordinator, New Jersey Environmental Federation
30. Carl Nordstrom, Executive Director, New Jersey Nursery and Landscape Association
31. Susan Ollinger, President, Association of Professional Landscape Designers
32. A. Pascale
33. Jane Post
34. Charlotte Ryden
35. Barbara Sachau
36. Kathleen V. Salisbury, The Native Plant Society of New Jersey
37. Ed Sokorai, Wetland Specialist, Cape May County Mosquito Control
38. Frank Stabile, Chief of Staff, Senator Nicholas P. Scutari
39. Kristine Stadler
40. James Swanton, Royal Turf Custom Lawn Care
41. Jim Waltman, Stony Brook Millstone Watershed Association

The timely submitted comments and the agency's responses are summarized below. The number(s) in the parentheses after each comment identifies the respective commenter(s) listed above.

### **General Comments**

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1. **COMMENT:** The public cannot rely on the information provided by the United States Environmental Protection Agency (USEPA) stating that a product is safe. The USEPA never tests new toxic products in combination with other products already on the market to see if toxic combinations ensue which are thousands of times more toxic than the original product. The USEPA never tests for long term complications produced by these products, they only require a two week or shorter period of time to test a particular product. Also, the USEPA approves products that have documented mortality in animals and give that documented mortality short shrift. The USEPA approval does not mean anything as far as the use of toxic pesticides in New Jersey, which is already “toxic”. (8, 35)

**RESPONSE:** The Pesticide Control Act of 1971 at N.J.S.A. 13:1F-1 et seq. authorized the Department to ensure the safe use of pesticides by regulating the use, transportation, storage, sale and disposal of pesticides and their containers. The Pesticide Control Code rules are designed to protect the public from exposure to toxic substances. The Department may refuse to register any pesticide, if the Department determines that the pesticide is highly toxic and there is no effective antidote under the conditions of use for which such pesticide is intended or recommended (see N.J.A.C. 7:30-2.4(a)).

2. **COMMENT:** The use of arsenic by farmers needs to be examined more closely since feed with arsenic additives makes an animal grow more quickly which could potentially lead to health problems for humans. (35)

**RESPONSE:** This comment evidently refers to the use of phenylarsenic compounds, used as feed additives to improve production in swine and poultry operations. These feed additives are not pesticides and neither the Pesticide Control Act

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of 1971 nor the regulations promulgated thereunder govern the manufacture or use of these compounds. These feed additives are subject to regulation by the Federal Food and Drug Administration and the United States Department of Agriculture.

3. **COMMENT:** We believe that the Department should apply some of the principles that it has applied through the School Integrated Pest Management Act into other areas of pesticide application. For example, these principles should be applied in lawn care, nursing homes and hospitals, golf courses, all state properties, and in conjunction with all state contracts. (29, 41)

**RESPONSE:** The Pesticide Control Act of 1971 at N.J.S.A. 13:1F-4 grants the Department the authority to formulate and promulgate, amend and repeal orders, rules and regulations prohibiting, conditioning and controlling the sale, purchase, transportation, labeling, use and application, or any thereof, of pesticides which cause or may tend to cause adverse effects on man or the environment by any person within New Jersey. The School Integrated Pest Management (IPM) Act at N.J.S.A. 13:1F-19 et seq. amended the Pesticide Control Act of 1971 by giving the Department the authority to mandate the use of IPM only in schools. The Department acknowledges the benefits of the use of IPM in other areas and encourages the use of IPM. On December 23, 1993 Governor Florio issued Executive Order No. 113 mandating the use of IPM on State buildings and grounds. Also, the rules at N.J.A.C. 7:30-6.2(a) currently require education in the principles of IPM as part of the certification and licensing process for pesticide applicators. The rules require pesticide applicators to be knowledgeable about IPM, but

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do not mandate that the applicators practice it. The Department encourages the use of IPM through outreach to the regulated community and in the publication of guidance developed with industry for use of IPM in specific sectors such as lawn care, structural pest control, and right-of-way maintenance. This guidance is available on the Pesticide Control Program's web site at: [www.pcpnj.org](http://www.pcpnj.org).

4. **COMMENT:** All fees collected by the Pesticide Program should be returned to and used only by the Pesticide Program. (28, 29)

**RESPONSE:** The Pesticide Control Act of 1971 at N.J.S.A. 13:1F-9(k) states that "all fees collected pursuant to this section shall be deposited in the Environmental Services Fund created pursuant to P.L. 1975, c. 232 and kept separate from other receipts deposited therein and appropriated for the operation of the Pesticide Control Program in the Department of Environmental Protection." The amount of funding that is returned to the Pesticide Control Program is determined annually through the legislative budget process.

**N.J.A.C. 7:30-1 Scope and Definitions**

5. **COMMENT:** The commenters are opposed to adding pesticides labeled as mosquito larvicides, whose only active ingredients are biological controls (such as *Bacillus thuringiensis*) and are formulated to slowly release the active ingredient over an extended period of time, as an exception to the definition of "aquatic pesticide." The commenters characterize this as a deregulation of *Bacillus thuringiensis* var. *israelensis* (Bti). The concern relates to any possible adverse impacts including the impact of Bti on non-target benthic invertebrates in the same pond, lake or stream. (29, 41)

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**RESPONSE:** The purpose of adding this exception to the definition of “aquatic pesticide” is to give the general public the ability to apply these biological controls (that are currently available at any home supply store) for mosquito larvicides on their own without the cost and time involved in hiring a commercial applicator and in obtaining an aquatic use permit. Many of these products are already available for homeowner use. The Department still regulates these products as registered pesticides to ensure proper use and still gathers data from all commercial applicators on their use.

The Department reviewed extensive literature on this subject and has determined that Bti poses minimal risk to non-target benthic invertebrates, even when they are exposed to higher than the recommended dosages on the pesticide label. In addition, the dosages required to affect a few sensitive species of immature benthic invertebrates were found to be 50 to 500 times greater than the recommended dose. Due to the mode of action for Bti involving the synergistic interaction of four toxic proteins and an insect’s possession of the proper receptors for all four proteins, non-target effects appear to be unlikely because only certain mosquito and fly larvae have these receptors.

6. **COMMENT:** The commenter is opposed to the aquatic pesticide exemption for mosquito larvicides whose active ingredients act by physical rather than chemical toxicity. Surface films which are petroleum products (like Golden Bear Oil) can have non-target effects that can impact food availability for fish and waterfowl. (29)

**RESPONSE:** The Department agrees that petroleum-based oils used for larviciding may pose a risk to fish and wildlife, if used incorrectly. However, monomolecular surface films, which do not include petroleum-based oils, pose a minimal risk to the environment. They

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do not last very long in the environment and are usually applied only to standing water, such as roadside ditches, woodland pools or artificial pools which contain few non-target organisms. On adoption, the Department is narrowing the exception to larvicides whose active ingredients are monomolecular surface films.

7. **COMMENT:** The commenters support the addition of both exceptions to the definition of “aquatic pesticide.” (16, 22, 27, 37)

**RESPONSE:** The Department acknowledges this comment in support of the amendment. However, as explained in response to Comment 6 above, the exception for mosquito larvicides that act by physical action is being modified on adoption to include only monomolecular surface films.

8. **COMMENT:** Slow release insect growth regulators, such as methoprene formulated as Pre-Strike, should be added to the list of exceptions from the definition of “aquatic pesticide.” (27)

**RESPONSE:** Methoprene has been extensively tested with many kinds of organisms. The methoprenes are not harmful to birds or mammals, but can be somewhat toxic to some fish and aquatic invertebrates. Risk assessments of the liquid products show that the concentrations of active ingredient in aquatic environments, if the products are used according to label directions, should be well below the levels that are harmful in laboratory toxicity tests. This is because the half life of liquid methoprene formulations is quite short. Scenarios where risk may increase are repeated applications, or the use of methoprene slow release formulations in shallow or poorly flushed waters. The data gap for chronic exposure to small quantities of methoprene over the long term, particularly in a poorly flushed medium, prevents conclusions from being drawn about the long term

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effects of the slow release formulation. Therefore, the Department will not be adding slow release insect growth regulators, such as methoprene, to the list of exceptions to the definition of “aquatic pesticide”.

**N.J.A.C. 7:30-2 Pesticide Product Registration, General Requirements, Prohibited and Restricted Use Pesticides**

9. **COMMENT:** N.J.A.C. 7:30-2.1(h). The commenters support the increase in fees for registering a pesticide from \$250 to \$300. (28, 29)

**RESPONSE:** The Department acknowledges this comment in support of the amendment.

10. **COMMENT:** The commenter would like to know the Department’s stance on the registration of methyl iodide to replace methyl bromide. (28)

**RESPONSE:** The USEPA has granted a conditional registration for the active ingredient, methyl iodide or iodomethane. The Pesticide Control Code rules at N.J.A.C. 7:30-2.4 provide that the Department can refuse, cancel or suspend a product registration if any person required to register refuses to comply with any of the provisions of FIFRA, the Pesticide Control Act of 1971 or the rules, or upon determination that continued use of a pesticide would present a significant risk of harm, injury or damage. Such refusal, cancellation or suspension gives the registrant the right to an administrative hearing pursuant to the Administrative Procedure Act. The Department has performed an initial review of six products containing the active ingredient methyl iodide and has registered them as restricted-use fumigants in New Jersey for the 2008 registration year. Based on

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its review to date, the Department does not believe that a refusal to register methyl iodide products is warranted. However, the Department is requesting additional information from the registrant and will continue to review these products in 2008.

**N.J.A.C. 7:30-3 Pesticide Dealers**

11. **COMMENT:** The commenter supports the elimination of the \$10 license examination fee at N.J.A.C. 7:30-3.2(b) and the \$5 increase in the commercial applicator license fee. (29)

**RESPONSE:** The Department acknowledges this comment in support of the amendments.

**N.J.A.C. 7:30-6 Commercial Pesticide Applicators**

12. **COMMENT:** The whole Pesticide Control Program is not working. No one in this State should be spraying toxic chemicals on a commercial basis without the Department's knowledge. The Department should maintain records of the names of the commercial applicators and the applications performed by them. (35)

**RESPONSE:** The Department requires that all persons who apply pesticides on a commercial basis must be licensed (see N.J.A.C. 7:30-5.1 and 6.1). This allows the Department to track who is performing commercial applications of pesticides in New Jersey. In addition, the Department requires extensive recordkeeping of each commercial application of pesticide, including who is making the application and the pesticide being applied. However, the Department does not have the resources to require full reporting of these records to the Department. Instead, the Department requires immediate access to

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these records of application upon request and requires the annual submission of information specifying the type and amount of pesticide applied in order to track pesticide use trends in New Jersey.

**N.J.A.C. 7:30-7 Pesticide Applicator Businesses**

13. **COMMENT:** The commenter is opposed to landscapers not registering their trucks with the Department. The commenter believes that these landscapers are dumping huge amounts of toxic chemicals on lawns and as a result are harming people's health. No company should be landscaping with toxic chemicals without clearly labeling its vehicles with the Department's license number in large letters as well as the company's name being clearly visible on the side of the truck. The company should also be required to display an identifier on the truck's license plate indicating that the company and the business is registered with the NJ Secretary of State. These regulations will not protect the public until the Department's employees check to make sure that the landscaping businesses comply with the regulations. (35)

**RESPONSE:** The Department requires all landscapers who apply pesticides as part of their business to be licensed by the Department (see N.J.A.C. 7:30-7.1(a)). Identification of service vehicles with a pesticide business license number three inches high is required by N.J.A.C. 7:30-7.1(e). Identification that the service vehicle is carrying pesticides is required by N.J.A.C. 7:30-9.5(f) in letters three inches high. The Department has no jurisdiction to require companies to register with the NJ Secretary of State or with the NJ Motor Vehicle Commission. However, the Department maintains contacts with

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these agencies and these agencies cooperate with the Department in the enforcement of the Department's rules.

**N.J.A.C. 7:30-8 Private Pesticide Applicators**

14. **COMMENT:** Private pesticide applicators should be charged a \$15.00 annual fee. The Department should regulate private pesticide applicators. (35)

**RESPONSE:** Private pesticide applicators are exempt from the licensing fee under the Pesticide Control Act of 1971 at 13:1F-17. However, the Department does regulate all private pesticide applicators (see N.J.A.C. 7:30-8).

**N.J.A.C. 7:30-9 Pesticide Exposure Management**

15. **COMMENT:** The commenters support the deletion of N.J.A.C. 7:30-9.1. (16, 22, 26, 27, 29, 37)

**RESPONSE:** The Department acknowledges this comment in support of the amendment.

16 **COMMENT:** Removal of any reference to the need to conform to the publication "Insecticides Recommended for Mosquito Control in New Jersey" is welcomed. This document was intended to be advisory, and as such, its removal from the regulations is appropriate. While this document is valuable, having it included in the regulations prohibited the use of a product that was labeled for mosquito control and legally registered for use in New Jersey for that purpose. Marking the deleted section as "reserved" indicates an intention to include language here in the future. (27)

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**RESPONSE:** N.J.A.C. 7:30-9.1 was deleted because the document referred to in this section, “New Jersey Agricultural Experiment Station Publication No. 40001-01-99, Insecticides Recommended for Mosquito Control in New Jersey” was not updated often enough and thus prevented mosquito control agencies from using newer, presumably more effective pesticides for mosquito control. The Department determined to reserve the deleted section because it simply puts a “placeholder” on the section for possible future use, and avoids the need for re-numbering the subsequent sections. If in the future, the Department proposes a new provision at N.J.A.C. 7:30-9.1, it will be subject to public comment under the rulemaking procedures of the Administrative Procedure Act. This assures the commenter that she will have the chance to review and comment on any future changes to N.J.A.C. 7:30-9.1.

17. **COMMENT:** Notification for community spraying, N.J.A.C. 7:30-9.10, is not really informative to the public since such notices cover a period of many months and the person affected by such toxicity never really knows when the toxic spraying will take place. In addition, there is aerial spraying, which is conducted in towns like Florham Park, which affect all bystanders even those who have notified the town and county that they do not want toxic chemicals sprayed on their property. (35)

**RESPONSE:** The rules at N.J.A.C. 7:30-9.10 are designed to provide information pertaining to the proposed application in order to give concerned individual(s) the information that is needed in order to avoid exposure, if they so choose. N.J.A.C. 7:30-9.10(b)3 requires that the following information be provided:

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1. The intended application date(s) or a range of dates within which an application may be made;
2. The location of the application;
3. The name, address, and license number of the applicator business or the responsible pesticide applicator associated with the application;
4. The brand name and active ingredients of the pesticide(s) to be used;
5. Application equipment to be used;
6. The name, address and phone number of a person who may be contacted and is responsible for supplying updated information on the advertised pesticide applications to those persons requesting it;
7. The New Jersey Poison Information and Education System telephone number for emergencies and the National Pesticide Telecommunications Network telephone number for routine health inquiries, and to obtain information about signs and symptoms of pesticide exposure;
8. The telephone number of the Pesticide Control Program and the statement: “This number for pesticide regulation information, pesticide complaints, and health referrals” ;
9. A statement that says: “Upon request, the pesticide applicator or applicator business shall provide a resident with notification at least 12 hours prior to the application, except for Quarantine and Disease Vector Control only, when conditions necessitate pesticide applications sooner than that time”.

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If any of this information is not given or if the information is not presented in at least two newspapers having the greatest likelihood of informing the public within the area of application, then this is grounds for a complaint investigation by the Department.

18. **COMMENT:** The commenters spoke in favor of the proposed wording change at N.J.A.C. 7:30-9.10(b)3ii, which would require the location of the application, specifically the street name, or names of the streets at the nearest intersection, municipality and county. They cited the need for such detailed information in order to avoid exposure to pesticides. (28, 29)

**RESPONSE:** The Department acknowledges this comment in support of the amendment.

19. **COMMENT:** The commenters are opposed to the proposed wording change at N.J.A.C. 7:30-9.10(b)3ii, citing the impossibility of knowing the exact streets to be treated at the time of publication, since the treatment area depends entirely on the numbers of adult mosquitoes observed. These numbers would be impossible to predict at the legally mandated times required for the newspaper ads. (16, 22, 26, 27, 37)

**RESPONSE:** The Department acknowledges the difficulty of predicting the exact streets which would need to be treated for control of adult mosquitoes given the time frame required by N.J.A.C. 7:30-9.10 for newspaper ads (a maximum of 30 days and a minimum of 7 days prior to the intended application date). However, for community notice in general, the Department believes that such detailed information (when available) would be beneficial to residents interested in taking precautions to avoid exposure to pesticides applied on a community or areawide basis. The Department has also determined that there may not be a

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benefit in identifying street names in cases of right-of-way spraying along railroads and power lines through several towns, for aquatic pesticide applications, and other areas that may not necessarily lend themselves to identification by street names. On adoption, the Department is modifying the wording of this rule to require the street name, or names of the streets at the nearest intersection to be placed in the advertisements when known at the time of the advertisement, and when it helps to identify the treatment area.

20. **COMMENT:** The commenters spoke or wrote in favor of a requirement for a standardized silver sign at N.J.A.C. 7:30-9.13(b), (c) and (e). The commenters asserted that silver would differentiate the pesticide sign from the multiple colors used in the Board of Public Utilities' color codes used for marking underground utility lines. A distinct silver colored flag would serve to lessen any confusion. The commenters indicated that adopting the silver color would be vital to protecting children who could then be educated about avoiding lawns or other areas where a silver flag is present. ( 1-10, 12-15, 18-21, 23-25, 30-34, 36, 38-40).

**RESPONSE:** Public and industry representatives advised the Department that a white colored sign with a dark contrasting lettering would be more visible than a silver colored sign. White is currently the most common choice for commercial applicators to use for the sign, and unifying the state-wide requirement as white would require the least transition and cost for the industry. The Department also believes that white is the most effective background color when contrasting lettering and illustrations are required. A silver (or gray) background color provides less contrast for the required lettering and

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symbol directing people to stay off the treated area. In the Board of Public Utilities' publications for utility mark-outs, white is indicated for excavators who may, at their own choosing, mark the area they have proposed for excavation to assist utility companies in placing their own markings for the location of utility lines. This may be done by any number of ways, including by marking a white line on the ground, white stakes placed around the perimeter of the excavation site, or white flags. This is unlikely to be confused with the Department-required white sign, which must have international signage (a circular illustration depicting an adult and a child on a lawn walking a dog, with a diagonal line across the circle) indicating people should stay off of the pesticide treated area, as well as lettering that specifies the name of the pesticide applicator business and the phrase "Pesticide Treated Area". The international signage is a well recognized symbol, and is used in a similar manner for signs such as "No Swimming" and "No Smoking." It is this symbol and its visibility against the background that is important in warning and teaching children to avoid areas which have been treated with pesticides.

The Department believes the safety concerns are better met by the use of a white sign. Pesticide education conducted by a concerned parent or group should teach the obvious features of the Department-required sign. For these reasons, the Department is adopting the amendment as proposed.

21. **COMMENT:** The commenters spoke or wrote in favor of a more visible standardized sign/flag. (28, 29)

**RESPONSE:** The Department acknowledges this comment in support of the amendment.

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**N.J.A.C. 7:30-10 Pesticide Use**

22. **COMMENT:** The commenter is concerned about the proposed amendment at N.J.A.C. 7:30-10.2(n) related to the re-entry time for children and staff following a pesticide application at a day care center. The commenter stated that this amendment basically says that if there is a specified minimum re-entry time on the label of a pesticide, it would trump the seven-hour re-entry time that is generally applied. The commenter disagrees and stated that a seven-hour re-entry time should be the minimal re-entry time, unless the label says that the re-entry time is longer than that (i.e., 12 hours or 24 hours) in which case the longer time should be respected and legally enforced. The commenter stated that the seven-hour minimum re-entry time was intended by the school IPM law and was intended to be transferred over to day care centers where the most vulnerable populations, infants and young children under the age of five, are typically spending eight to twelve hours of their day in close contact with the ground and surfaces. These are the most vulnerable children and a minimum seven-hour re-entry time should be applied. (29)

**RESPONSE:** The Department acknowledges the concerns of the commenter. The Department proposed the amendment at N.J.A.C. 7:10.2(n) to make the wording regarding the re-entry requirement for day care facilities clearer. The clarification in the wording does not change the meaning of the current rule. The proposed amendment is still consistent with the wording of the School IPM Act and the rules at N.J.A.C. 7:30-13.8(a). The language of the School IPM Act at N.J.S.A. 13:1F-29 is:

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“A pesticide, other than a low impact pesticide, shall not be applied on school property where students are expected to be present for academic instruction or for organized extra-curricular activities prior to the time prescribed for re-entry to the application site by the United States Environmental Protection Agency on the pesticide label, except that if no specific numerical re-entry time is prescribed on a pesticide label, such a pesticide, other than a low impact pesticide, shall not be applied on school property where students are expected to be present for academic instruction or for organized extra-curricular activities within seven hours of the application.”

Based on the above language, if a pesticide label states a numerical re-entry time of four hours, then four hours is the allowed re-entry time for students. If a pesticide label states that re-entry is allowed when the pesticide has “dried”, the lack of a numerical re-entry triggers the seven-hour minimum. In addition, the Department’s regulatory experience shows that pesticide applicators rarely use pesticides where children may come into contact with them. The commenter is suggesting an amendment that would be more stringent than the School IPM Act and the amendment as proposed. Consideration of this must be deferred to future rulemaking, as this is a substantive change that would require an opportunity for public comment.

23. **COMMENT:** Commenters are opposed to the amendment at N.J.A.C. 7:30-10.4(a)2 because they assert that the Board of Public Utilities (BPU) rule exempts “routine maintenance of residential property for pest management purposes performed

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with non-mechanized equipment” from the definition for excavation. The commenters are concerned that the reference to the BPU rules is duplicative, confusing, and would expose pest control companies to possible enforcement action from two agencies for a single action. (11, 17)

**RESPONSE:** In consideration of the potential for confusion and duplicative enforcement based on this requirement, the Department is not adopting the proposed amendment at N.J.A.C. 7:30-10.(4)a2 and will continue discussions with industry representatives on the best methods for notifying pesticide applicators about the BPU’s requirement for notification to the One-Call center prior to excavation in an underground facility. Since the Department is not adopting this requirement, the Department is also not adopting the definition for “underground facility”.

24. **COMMENT:** The commenter supports the increase in the sampling fees at N.J.A.C. 7:30-10.8. (29)

**RESPONSE:** The Department acknowledges this comment in support of the amendment.

**N.J.A.C. 7:30-13 Integrated Pest Management in Schools**

25. **COMMENT:** The commenter supported the proposal to clarify that each school shall maintain a site specific IPM plan at N.J.A.C. 7:30-13.2(a) and that school districts should report any changes in the designation of the IPM coordinator at N.J.A.C. 7:30-

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13.3 and that records should be provided for medical personnel in emergency cases at N.J.A.C. 7:30-13.4(a). (29)

**RESPONSE:** The Department acknowledges this comment in support of the amendment.

26. **COMMENT:** The commenter disagrees with the Department's interpretation and application of N.J.A.C. 7:30-13.6(a)1. Specifically, the rule would provide that when there is a five-day vacation period and a pesticide application is proposed for the third day of that five-day window, 72-hour written notification does not need to be sent to all the students and staff. The reasoning is that students are not going to be in the school on the three days before and after the application. There is a requirement for posting, but not for the written notification.

The commenter does not believe this written notification should be waived during a five-day vacation. During a winter school vacation or spring break athletic fields are going to have a weed control application or the kitchen is going to have a high-impact pesticide use. It is skirting the intent of the law to not notify parents.

The commenter asserts that in some cases applications are being made during these breaks to avoid providing notification. In one sense, it is good that the application is done over a break when students are not in the building for five days. On the other hand, when the students come back, they do not know the application took place. A student who has asthma or a teacher who is pregnant would want to know that the application took place. There may be extra precautions that they take depending on the kind of application. (29)

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**RESPONSE:** The 72-hour written notification requirement is a pre-application notice to parents and staff alerting them of a proposed pesticide application when the school is in session. During holidays, the School IPM Act requires that notice of the pesticide application must be provided to staff and parents of school children that are using the school in an authorized manner.

There are other notification rules that parents and staff may rely upon, if they are interested in receiving a notice of a pesticide application that has taken place during a holiday. Commercial pesticide applicators applying pesticides to the school building during a holiday must post notices of the proposed applications and must post notices in centralized areas alerting people that the applications have taken place (see N.J.A.C. 7:30-9.12(d)3iv). Pesticide applications to lawn areas require the posting of flags in treated areas to alert students, staff and the public (see N.J.A.C. 7:30-9.13(e)). IPM Coordinators at each school are required to keep information about pesticide applications on school grounds and to supply this information to requestors (see N.J.A.C. 7:30-13.3(a)). Additionally, N.J.A.C. 7:30-9.15 allows interested people to request notification directly from a commercial pesticide applicator. Thus, people who are not entitled to a 72-hour written notification prior to a pesticide application during holidays, because they will not be on school property, may still obtain information about pesticide use activity on school property and make informed decisions about avoiding exposure.

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### **Federal Standards Analysis**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies which adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law.

The Environmental Protection Agency (EPA) is responsible for regulating the use of pesticides in the United States. The legal authority for this regulation is found in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. §§ 136-136) adopted on October 21, 1972. FIFRA requires, among other things, that pesticides may only be used to the extent that their usage does not cause unreasonable adverse effects on the environment. The Department is also obligated under Federal law to ensure that its program is at least as stringent as Federal pesticide requirements.

The Department is responsible for regulating the sale, use and application of pesticides in the state of New Jersey. Historically, New Jersey began regulating pesticides in 1951 with the Economic Poison Act. With the creation of the Department and the passage of the Pesticide Control Act of 1971, New Jersey began to structure pesticide regulations based on the Federal program. The legal authority for the rules is found in the New Jersey Pesticide Control Act of 1971 (N.J.S.A. 13:1F-1 et seq.). This Act gives the Commissioner the authority to formulate and promulgate rules and regulations prohibiting, conditioning and controlling the sale, purchase, transportation, disposal and use of pesticides by any person within the State. The Pesticide Control Program regulations carry out both the responsibilities of the Department under the Pesticide Control Act of 1971 (N.J.S.A. 13:1F-

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1 et seq.) and implement the enforcement responsibilities delegated to the Department under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7, U.S.C. §§ 136 et seq.

As stated in N.J.S.A. 13:1 F-2, New Jersey, as the most densely populated and urbanized state in the nation, must be especially alert to any possibilities of disturbing natural ecological balance. This requires consideration of many factors, including long term effects on the environment, as well as the safety and effectiveness of pesticides. Indiscriminate use of pesticides in the State would constitute a serious threat to the environment. This threat can be eliminated by the adoption and enforcement of regulations governing the sale use and application of all pesticides. The adopted rules continue to exceed the Federal law in the areas of classification of pesticides, commercial pesticide applicator certification, commercial and private pesticide application recordkeeping, and agricultural worker protection. Many of the adopted amendments clarify existing requirements, which serve to explain those requirements to the regulated community. The reader should note that those provisions in the Code which are not discussed below are either equal in all ways to the comparable Federal regulations, or have no Federal equivalent and thus do not require a Federal Standards Analysis. Where the Department is adopting an amendment which may exceed the Federal requirement, it is discussed below. Those rules that the Department is adopting are also discussed below:

**N.J.A.C.**

**7:30-2**

**Pesticide Product Registration, General Requirements, Prohibited and Restricted Use Pesticides**

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1. FIFRA Section 4(I)5 requires that all pesticide products must be registered annually with the EPA. The adoption of the requirements for the annual registration of all pesticide products held, used, distributed, sold or offered for sale within the State or delivered for transportation or transported in intrastate commerce or between points within the State, through any point outside the State at N.J.A.C. 7:30-2.1(a) is mandated in the Pesticide Control Act of 1971 at N.J.S.A. 13:1F-15.
  
2. FIFRA Section 152.132 allows a pesticide registrant to distribute or sell its registered product under another person's name and address instead of (or in addition to) his or her own. Such distribution and sale is termed "supplemental distribution" and the product is referred to as a "distributor product." The distributor is considered an agent of the registrant for all intents and purposes under FIFRA and both the registrant and distributor may be held liable for violations. At N.J.A.C. 7:30-2.1(b), the Department requires that any pesticide product containing a supplemental registration and all brand or trade names must be registered separately. N.J.A.C. 7:30-2.1(b) is mandated in the Pesticide Control Act of 1971 at N.J.S.A. 13:1F-15(b).
  
3. At FIFRA Section 3(2)(A), the pesticide product registrant is required to submit extensive data in support of pesticide registration. At 40 C.F.R. Part 152.50, the pesticide product registrant is required to submit the following information:

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- The identity of the applicant;
- The applicant address;
- The company number;
- A summary of the application which includes a list of data submitted with the application together with a brief description of the studies performed;
- The identity of the product which includes the products name, the trade name and the EPA registration number;
- Draft labeling;
- Registration data requirements;
- Certification relating to child resistant packaging;
- A request for classification; and
- A statement concerning tolerances.

At N.J.A.C. 7:30-2.1(c), the Department requires that the pesticide product registrant file a statement with the Department that includes:

- The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;
- The brand name of the pesticide;

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- A complete copy of the current label, which shall contain all statements, words, graphic material and any other information required by FIFRA, and the labeling accompanying the pesticide and a statement of all claims including the directions and precautions for use; it also requires that if a label is revised, that a revised label be sent to the Department;
  - The use classification of the pesticide as required by Federal or State regulations; and
  - For registrants of any TBT antifoulant paint labeled for marine uses, a certification which states that the TBT antifoulant paint has an acceptable release rate.
4. At N.J.A.C. 7:30-2.1(d), the Department, when deemed appropriate by the Commissioner, may require the pesticide product registrant to provide the Department with the complete formula of the pesticide product. The specific authority for this is found in the Pesticide Control Act of 1971 at N.J.A.C. 13:1F-15(c).
  5. At N.J.A.C. 7:30-2.1(e), for registration of pesticide products which are termiticides labeled for subterranean application, resource manuals, clean-up procedures, and sampling methodology shall be supplied;

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6. The Department is adopting an amendment that N.J.A.C. 7:30-2.1(h) require the pesticide product registrant to pay an annual registration fee of \$300.00 to the Department or its authorized representative for each pesticide to be registered. The authority to establish and charge annual fees for any services performed by the Program is found in the Pesticide Control Act of 1971 at N.J.S.A. 13:1F-9(k).
7. At FIFRA, Section 4(i)(5)(D), if the annual maintenance fee to register a pesticide product is not paid by the pesticide product registrant, the EPA Administrator may cancel, without hearing, the registration of the pesticide product.
8. At N.J.A.C. 7:30-2.1(j), if the annual pesticide product registration fee is not paid by January 1 of any year, the Department is authorized to assess an additional \$100.00 per product fee. The registration of pesticide products is mandated at N.J.S.A. 13:1F-15. N.J.S.A. 13:1F-10 authorizes the Department to issue penalties of not more than \$3,000 to persons who violate any provisions of the Act.

The overall benefit of the registration of pesticide products is the protection of life, property and the environment. The information required to be submitted to the Department under N.J.A.C. 7:30-2.1 is already supplied to the EPA in support of Federal pesticide product registration. Therefore, N.J.A.C. 7:30-2.1 does not exceed the Federal standard. The information requested is basic administrative information necessary to track the registration of pesticide products in the State and aid in the clean-up of termiticides should they be misapplied.

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Approximately three million pounds of pesticide active ingredients are used annually on farm and for other commercial use in New Jersey. This figure does not include products formulated for consumer use by homeowners. The EPA estimates that consumer use is a significant part of overall pesticide use, with more money being spent on consumer pesticides than commercial products. New Jersey, being the most urban state in the nation, must be especially alert to any possibilities of adverse effects on man or the environment due to pesticide use and regulate them accordingly. Pesticides are consciously manufactured to be toxic to living organisms and their use is potentially hazardous. Pesticide product registration fees help support the Program and help ensure that pesticides are used properly and that exposure of these toxic agents to workers and the public is minimized.

All 50 states in the union register pesticides at the state level. Several states have implemented fee levels similar to those of New Jersey (California, Louisiana, Massachusetts). In addition, some states such as Wisconsin have augmented their product fee based on gross sales of a pesticide product. At a meeting of the American Association of Pesticide Control Officials held in Washington, D.C. in March 1994, chemical manufacturers indicated their support of the concept of states using a flat-rate product registration fee in an amount sufficient to support their regulatory programs, instead of other schemes with more extensive administrative costs.

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The funding scheme that the Department believes will have the least economic impact on the pesticide industry and the consumer, while generating the needed revenue, is a product registration fee. This approach allows for a moderate fee since the revenue is generated from a broad base of approximately 12,000 products marketed in New Jersey. Since the requirement is an annual per product fee, there is an equitable fee burden on the larger manufacturers who market numerous products versus the small producers who may market only one product. The Department believes that the fee, even for low-volume products, will not result in a need to pass on costs to the consumer. Estimated pesticide sales volume in New Jersey is 60 to 80 million dollars per year. Thus, the Department believes that an annual \$300.00 product registration fee does not affect the sales of pesticides in the State or the price of products to consumers.

9. At N.J.A.C. 7:30-2.2 and 2.3 the State is delegated the authority by the EPA at C.F.R. Parts 166 and 172 to register pesticides for special local needs, to issue emergency exemptions and experimental use permits. Accordingly, no further analysis is required under P.L. 1995, c.65.
10. The rules at N.J.A.C. 7:30-2.4, 2.6 and 2.7 pertaining to public disclosure of pesticide product formulas, refusal, cancellation, or suspension of a pesticide registration, pesticide product registration records, and general requirements regarding the holding, use, distribution, and sale of pesticide products in the State contain no standards or requirements that exceed the standards or requirements

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imposed by Federal law. Accordingly, no further analysis is required under P.L. 1995, c.65.

11. At N.J.A.C. 7:30-2.5, the Department has the authority to collect samples and right to enter and inspect properties other than private residences. The Pesticide Control Act of 1971 at N.J.S.A. 13:1F-9 allows the Department to promulgate this rule. In addition, EPA at 40 C.F.R. 171.7(b)(iii)(A) requires each State with an approved plan for applicator certification to have provisions for right-of-entry by consent or warrant by appropriate State officials. Accordingly, no further analysis is required under P.L. 1995, c.65.

12. At N.J.A.C. 7:30-2.8, the Department may secure or impound any pesticide being held used, distributed sold or offered for sale in violation of the Pesticide Control Act of 1971 or the Pesticide Control Code rules. EPA has the authority in FIFRA Section 13 to place a “stop sale” on a pesticide or pesticide device if the pesticide or device is in violation of any provisions of the Federal law. N.J.S.A. 13:1F-11 authorizes the Department to promulgate N.J.A.C. 7:30-2.8. This rule is more stringent than Federal law because the Department may secure or impound a pesticide for any violations of the State regulations, including those more stringent than the Federal rule, such as State product registration requirements. The Department does not want pesticides used, stored, distributed, sold or offered for sale until the individual or business comes into compliance with the regulations. The cost of compliance may be the payment of examination or

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- registration fees to become a dealer in restricted use pesticides (\$75.00), or the registration fee to become a certified pesticide applicator (\$80.00) or applicator business (\$150.00). All these registrations require the individual to receive training in the safe use, storage and distribution of pesticides. Given the benefit of potentially saving lives, property and the environment, the Department feels that this regulation is reasonable and needed.
13. N.J.A.C. 7:30-2.9 pertains to the holding, use, distribution, and sale of prohibited pesticide products in the State. This section contains no standards or requirements that exceed the standards or requirements imposed by Federal law.
  14. At N.J.A.C. 7:30-2.10, the Department classifies, as restricted use, pesticides which can only be purchased and used by licensed commercial or private pesticide applicators. These restricted use pesticides can also be used by trained commercial pesticide operators, and by trained pesticide handlers under direct supervision of a licensed commercial or private pesticide applicator respectively.
  15. At N.J.A.C. 7:30-2.10(a)1, the Department adopts the EPA standard for the classification of pesticides as restricted use. Accordingly, no further analysis is required under P.L. 1995, c.65.
  16. At N.J.A.C. 7:30-2.10(a)2, 3 and 4, the Department classifies additional pesticides as restricted use in ways more stringent than the EPA. The classification of these

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pesticides as restricted use is based on operational experience, public health and environmental concerns. The analysis required by P.L. 1995, c.65 is set forth below.

17. At N.J.A.C. 7:30-2.10(a)2, the Department classifies all fumigants restricted use with the exception of:

- Any pesticide containing naphthalene, ortho-dichlorobenzene, and/or para-dichlorobenzene as the sole active ingredient or in combination with another active ingredient which is not classified for restricted use if the pesticide product is used to control mosquitoes or clothes moths, or to repel warm-blooded animals;
- Any sulphur candle fumigator intended to control general household pests; and
- Any coils containing pyrethrins and/or allethrin as the active ingredient which are used to control flies and/or mosquitoes.

Fumigants are composed of small, volatile, organic molecules that become gases at temperatures above 40 degrees F. They are usually heavier than air and commonly contain one or more of the halogens (Chlorine, Bromine, or Fluorine). Many fumigants, when used alone, do not have adequate warning characteristics. This means that they are odorless or that the odor is not perceived until toxic levels are reached.

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Toxic chemicals can enter the body in three ways: (1) by swallowing (oral), (2) by breathing (inhalation), and (3) by absorption through the skin (dermal). Of these three avenues of entry, the respiratory (inhalation) system is the quickest and most direct route of entry to the circulatory system. Fumigants are able to move readily through cell membranes and enter the blood capillaries of the lungs. From this point toxicants can be transported rapidly throughout the body. The potential for the inhalation of these pesticides and acute poisoning, even death from exposure to these pesticides, is very high given the fact these chemicals become gases at temperatures above 40 degrees Fahrenheit.

The reason the Department classifies all “true” fumigants as restricted use is because they are highly toxic, they require special application technique and require the use of respirators or self-contained breathing apparatus by the pesticide applicator. Without proper training these highly toxic materials can cause permanent injury or death to applicators and the public who may be exposed. Currently, there is only one fumigant product (ethylene oxide) on the market in New Jersey that is not classified as restricted use by the EPA.

18. At N.J.A.C. 7:30-2.10(a)3, the Department classifies all pesticides labeled for aquatic use as restricted-use pesticides whereas the EPA may classify some aquatic use pesticides as general use. Aquatic pesticides, because they are designed to be directly applied to aquatic sites, are inherently more hazardous than non-aquatic pesticides of the same toxicity. The main reasons for that are that

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water is 1) a non-static environment, therefore potential exposure to water body users downstream is very high; and 2) aquatic organisms are very susceptible to harm when their entire environment is subject to a pesticide treatment. Therefore, to minimize that hazard, extra oversight is justified. In 1982, only those aquatic pesticides with water use restrictions or prohibitions (such as limitations on swimming or applications near drinking water intakes) were classified as restricted use pesticides. It was thought at the time, that if there were no water use restrictions or prohibitions, then the potential adverse impact from their use would be minimal. The theory that the aquatic use pesticides without water use restrictions or prohibitions (essentially the copper-based algaecides) had low potential or adverse impacts was disproved over the next five years, as misuse and careless use resulted in numerous fish kills every year, mostly from unlicensed pesticide applicators. So, all aquatic use pesticides were made restricted use in 1988.

19. At N.J.A.C. 7:30-2.10(a)5, the Department places additional pesticides under State restricted-use that the EPA may classify as general use.

FIFRA requires chemical manufactures to register pesticides with the EPA before they can be used. The registration process includes specific requirements for submission of test data on health effects so that EPA can assess whether the pesticide will result in unreasonable adverse effects on the environment (not whether it will be totally safe). The EPA acknowledges that many health studies conducted on pesticides years ago are

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inadequate by today's standards. Yet these studies are the basis for the registration of most pesticides used today. For many pesticides, EPA has asked manufacturers to submit additional data. Additionally, the Federal Food Quality Protection Act of 1996 requires EPA to re-evaluate the risks of individual pesticide exposure in relation to pesticide exposure from all sources. EPA scientists will then decide whether these products currently registered and on the market may continue to be used for the specific purposes for which they were originally registered. In the meantime, these products may continue to be sold despite the possibility that new data may eventually prove they are hazardous for their intended use. Manufacturers are not required to state on product labels that the contents are being studied for health effects. According to a General Accounting Office (GAO) report ("Nonagricultural Pesticides: Risks and Regulation," RCED-86-97) the review of non-agricultural pesticides will not be completed for many years.

Classifying a pesticide product as restricted use does not mean that the product is not available for use. This classification means that the product can only be used by licensed commercial or private pesticide applicators. The purpose for this is to keep these pesticides with a higher potential for adverse human health and environmental effects out of the hands of the untrained individual, such as the homeowner who does not have the safety equipment typically in the hands of the commercial pesticide applicator. Many of the pesticides listed as restricted use are available "off the shelf" for homeowner use at lower "ready to use" concentrations and pre-mixed formulations which serve to limit the handling of the pesticide (for example measuring and mixing).

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The cost for a private applicator to become licensed is \$15.00 (\$15.00 for study manuals). Once certified there is no annual registration fee. Private pesticide applicators are also required to attend continuing education courses or to retake the exam after a five-year period. These courses are designed to keep the applicator informed about new regulations, new techniques in pest control and new pesticides on the market. An applicator, over a five year period must obtain eight credits of training in the “core” area and 16 credits of training in “Private Part 2.” If an individual private applicator chooses not to attend continuing education courses or does not obtain enough credits over the five year period he or she may re-take the “Private Exam” test again to become certified and thus eligible for a license. The average cost of a course given by the County Agricultural Cooperative Extension Service is \$30.00. At each course an applicator can obtain an average of two core credits and four credits in “Private Part 2” training. It would cost a private pesticide applicator approximately \$120.00 over a five year period to become re-certified, averaging \$24.00 per year. The expenses are completely tax deductible. This estimate may be overstated because some courses are given at no charge by the counties or other agricultural organizations.

The average cost to become certified as a commercial pesticide applicator is \$64.00 (cost of the Core study manual = \$30.00, average cost of the category study manuals = \$17.00). Once certified, the individual would then pay an annual licensing fee of \$80.00 (Total initial cost = \$144.00). For a commercial pesticide applicator certified in two categories (average) it would cost approximately \$240.00 over a five year period to become re-certified, averaging \$48.00 per year. Therefore, after the one time \$64.00 cost

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to take the licensing exams, the annual cost for a commercial pesticide applicator to maintain a license is \$128.00 (license + average re-certification), which is completely tax deductible (for a more detailed cost analysis, see the regulation on certification and training of commercial applicators, N.J.A.C. 7:30-6.2(a)).

In view of the health questions, and potential hazards surrounding many of the pesticides registered for use by the EPA, the Department has placed additional pesticides under restricted use in N.J.A.C. 7:30-2.10(a)4i through iv. The pesticides listed under this section are classified as restricted use for one or several reasons. The Department's concern of acute toxicity, neurotoxicity, the potential for chronic health effects including but not limited to carcinogenicity, mutagenicity, teratogenicity, embryo toxicity, and reproductive effects. Environmental fate is also a factor in restricting some of these pesticides, including but not limited to, the potential for persistence, bioaccumulation, frequency of detection in environmental media, and the potential for contamination of the waters of the state. The Department may have also experienced problems with the use pattern of the pesticide, or the pesticide may have been chronically mis-used. Because of these factors, the Department believes that this regulation is a reasonable and attainable requirement.

**N.J.A.C. 7:30-3**      **Pesticide Dealers**

EPA at 40 C.F.R. 171.11 (g) regulates dealers in restricted use pesticides only in states or on reservations where there is no approved state or tribal pesticide applicator

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certification plan in effect. EPA delegates authority for the oversight management of the sale of restricted use pesticides to states that have approved certified pesticide applicator programs. Since New Jersey's certified pesticide applicator program satisfies the requirements of 40 C.F.R. 171.7(a) through (e), EPA does not regulate restricted use pesticide dealers or dealer businesses in New Jersey. Accordingly, no further analysis is required under P.L. 1995, c.65.

While New Jersey's Pesticide Control Program is essentially equivalent to the Federal requirements, N.J.A.C. 7:30-3.7(a) and 4.2(a) pertain to recordkeeping which is more stringent. This requires the same recordkeeping requirements for general use pesticides as restricted use pesticides, when the dealer is selling to a commercial, municipal or corporate account. The Department believes that the adopted rules, which in certain respects do exceed comparable Federal standards, are fully justified from a policy, legal and cost-benefit perspective.

The adopted rules are justified because New Jersey has long required (since 1975) certification and licensing of commercial pesticide applicators who use both general and restricted use pesticides on properties other than their own. New Jersey has also long required the training and licensing of commercial pesticide operators, who work under the supervision of certified applicators. They too use both general and restricted use pesticides. In addition, New Jersey has required (since 2003) the certification and licensing of all private pesticide applicators regardless of whether they use general or restricted use pesticides. The reasons for the additional certification and licensing

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requirements have to do with the population density of New Jersey and the proximity of treated areas to other residents, water bodies, natural areas and the environment. Recordkeeping on all pesticide sales has become essential to enforce these restrictions and ensure the training of those who use pesticides in this state.

**N.J.A.C. 7:30-4**      **Pesticide Dealer Businesses**

N.J.A.C. 7:30-4 which pertains to the licensing of businesses which deal in restricted use pesticide sales is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, no further analysis is required under P.L. 1995, c.65.

**N.J.A.C. 7:30-5**      **Pesticide Operators**

N.J.A.C. 7:30-5 which pertains to the licensing of pesticide operators is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, no further analysis is required under P.L. 1995, c.65.

**N.J.A.C. 7:30-6**      **Commercial Pesticide Applicators**

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The Department's pesticide applicator certification program has been approved by EPA and is adequate to implement the requirements of 40 C.F.R. Part 171. New Jersey has had an approved applicator certification plan since 1975.

While the Department's pesticide applicator certification program is equivalent to the EPA program, there are two areas in which the Department program is more stringent. The analysis required by P.L. 1995, c.65 is set forth below.

1. Applicator Certification

At N.J.A.C. 7:30-6.2(a), commercial pesticide applicators are required to be certified to use both general use (“over the counter”) and restricted use pesticides. As provided at 40 C.F.R. Part 171.1, the EPA only requires pesticide applicator certification, if the applicator applies federally restricted use pesticides.

The basis for the establishment of this requirement is that despite the fact that some pesticides are considered to be relatively low in toxicity, all pesticides can be hazardous to man, non-target animals and the environment, if not used properly.

Commercial applicators (such as structural pest control operators and landscapers) generally use a much greater volume of pesticides (even “over the counter” types) than an individual homeowner and these pesticides are applied to properties other than their own. Thus mistakes made by a commercial applicator have a greater potential impact on both

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the environment and the applicator. The 2000 Census data shows that while New Jersey is ranked 9<sup>th</sup> in total population, the population density per square mile is higher than any other state. The high population and housing densities in New Jersey give rise to intensive pesticide use in the State. For these reasons along with those set forth below, licensing is required for all commercial pesticide applicators in New Jersey.

An array of pesticide products, ranging widely in toxicity and potential adverse effects, is available “over the counter” to the commercial pesticide applicator. Under 40 C.F.R. Part 171.1, no training is required to purchase and use these products, and no one is required to monitor application practices of these applicators. EPA acknowledges, however, that many of these products are hazardous, especially if they are stored, handled, or applied improperly. For example, sprayed through nozzles as fine mists, pesticides can blow or drift away from target areas, especially on windy days. When applied as a liquid mixed in water, the spray can run off along the ground away from the target area, particularly in wet weather. Chemicals escaping from the target area in these ways may reach pets, plants, water, soil, fish, and wildlife.

Acute health effects from exposure to pesticides may vary in severity from skin irritations and headaches to life threatening cases. Pesticide applicators must perceive they have treatable symptoms. In order for pesticide applicators to understand that they are experiencing an acute or allergic effect as a result of being exposed to pesticides, they would need to be both aware they were being exposed to pesticides and aware of the

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signs and symptoms of pesticide poisoning. The Department believes that without requiring pesticide applicators to be certified, many pesticide applicators would not know typical signs and symptoms of pesticide poisoning.

In addition to acute and allergic adverse health effects, pesticides are known to cause delayed adverse health effects. Some of the delayed effects caused by pesticides include:

1. Chronic effects including tumors, cancer, and genetic changes;
2. Developmental and reproductive effects, including birth defects, miscarriages, stillbirths, infertility, sterility, and impotence; and
3. Systemic effects, including toxic effects on the heart and circulatory system, brain and nervous system, skin, lungs and respiratory system, liver and kidneys.

Unlike acute and allergic effects, where the symptoms usually appear soon after casual exposure, evidence of delayed adverse effects from pesticide exposure almost always emerges long after the casual exposure(s). This, coupled with the fact that symptoms of pesticide-caused delayed adverse effects are not unique, results in a predictable lack of hard data as to the extent and magnitude of pesticide-caused delayed adverse effects. Studies have demonstrated that many pesticides cause adverse effects in animals, and some pesticides have been observed to have adverse effects on humans.

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In addition to mitigating adverse effects from occupational exposure to pesticides, the pesticide applicator certification program seeks to limit potential adverse effects of pesticide use on the public and the environment. Since 1989, the EPA has been in the process of requiring and evaluating additional health studies of many pesticides including “over the counter” pesticides. Even when this information is completely analyzed, no product can be deemed inherently “safe” for use. The safety of a product is a factor of how it is used. Applicator certification is designed to teach safe use of all pesticides.

FIFRA requires chemical manufacturers to register pesticides with the EPA before they can be used. The registration process includes specific requirements for the submission to EPA of test data on health effects so that the EPA can assess whether the pesticide will result in “unreasonable” adverse effects on the environment. EPA performs a risk/benefit analysis to determine whether the benefits outweigh the risks in using the pesticide. In doing so, EPA acknowledges that many pesticides have a negative impact on the environment that is outweighed by its benefits. This makes proper use of these pesticides through a certification and licensing program even more important.

EPA acknowledges that many of the health studies conducted on pesticides years ago are inadequate by today's standards. Yet these studies have been the basis for the registration of many pesticides used today. For many pesticides, EPA has asked manufacturers to submit additional data. EPA scientists will then decide whether these products currently registered and on the market may continue to be used for the specific purposes for which they were originally registered. EPA was mandated to re-register

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products in 1988 due to the lack of adequate test data, and additionally the Federal Food Quality Protection Act of 1996 required EPA to evaluate the risks of individual pesticide exposure within the context of overall exposure to all pesticides likely to affect an individual. As a result, many pesticide products or specific uses have been canceled or suspended. Until specific pesticides are evaluated, manufacturers may continue to sell these pesticides despite the possibility that new data may eventually prove they are more hazardous than initially thought. Manufacturers are not required to state on product labels that the contents are being studied for health effects.

Also, “inert” ingredients, which generally make up the bulk of pesticide products, have not been subject to the same test requirements and usually are not identified on the pesticide label. The term “inert” simply means that they are not the pest-killing ingredient in the mixture. They serve a variety of purposes such as carrying or dissolving the active ingredients. These ingredients are not necessarily benign and many, like benzene, carbon tetrachloride, chloroform, and xylene, for example, are suspected or known to cause chronic health effects. Proper use of the pesticide product by a trained applicator, will help minimize exposure of the pesticides and “inert” chemicals to individuals and non-target sites.

There are approximately 8,511 commercial pesticide applicators licensed in New Jersey. There is no way to even estimate the number of applicators who would be required to be licensed applicators under the Federal law either because they are using a Federally restricted-use pesticide or because of pesticide labeling requirements.

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The certification to become a licensed pesticide applicator in New Jersey is a four-step process. The first step is to attend a Department approved training course that is designed to provide the applicator with a working knowledge of the following:

1. The proper use of application equipment;
2. The potential hazards that may be involved in applying pesticides;
3. Instruction for mixing pesticides to be used in particular circumstances;
4. Protective clothing and safety equipment required during the handling and application of pesticides;
5. General precautions to be followed in the disposal of containers as well as the cleaning and decontamination of equipment;
6. Applicable State and Federal pesticide laws and regulations;
7. An understanding of how to correctly interpret pesticide label and labeling information; and
8. An understanding of the principles of integrated pest management (IPM).

The second step is to pass the basic “Core” test. The purpose of the Core test is to help the individual learn the basic facts and skills about pesticides and pesticide use. The pesticide applicator learns about pesticide toxicity, symptoms of pesticide poisoning, first aid for pesticide poisoning, safety precautions before, during, and after applications, the proper use of respirators, pesticide labeling, application equipment, and pesticide regulations. This information is based on information contained in the “Core Training Manual” which can be purchased at cost from the various County Agricultural

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Cooperative Extension offices throughout the State. Once the individual has studied the Core Manual, he or she can take the Core test, which is a closed book test administered by the Pesticide Control Program.

Once the Core exam is passed, the third step is to complete a minimum of 40 hours of training. The fourth step is to pass any or all of the category exams which deal directly with the type of work the individual will be doing. Although the category exams will become closed-book exams as they are revised, most of the category exams are still time limited open-book exams. The exceptions are categories 3A-Ornamentals, 3B-Turf and 7A-General and Household Pest Control. Each category test covers specific control techniques for the pests the applicator will be controlling or the sites to which the pesticide application is made.

The basic training course can be taken for free at the Pesticide Control Program offices in Trenton. The cost of the Core study manual is \$30.00. Each category study manual the individual intends to be certified in varies in cost from \$11.00 to \$30.00 with the average cost being \$17.00. Most commercial pesticide applicators in the pest control industry are typically certified in two categories. Therefore, the average cost for an exterminator or a landscaper to become certified as a commercial pesticide applicator would be \$64.00. Once certified, the individual would then pay an annual licensing fee of \$80.00.

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Commercial pesticide applicators are also required to attend continuing education courses. These courses are designed to keep the applicator informed about new regulations, new techniques in pest control and new pesticides on the market.

An applicator, over a five year period must obtain eight(8) credits of training in the Core area and 16 credits of training in each category the individual is certified. Each credit is the equivalent of ½ hour of training. Again, using the typical commercial pesticide applicator certified in two categories as an example, an individual would need eight credits in Core and 32 credits in category information. The average cost of a course given by the County Agricultural Cooperative Extension Service is \$30.00. At each course an applicator can obtain an average of two core credits and four category credits (often more credits are awarded per course).

For an applicator certified in two categories it would cost approximately \$240.00 over a five year period to become recertified. This averages out to \$48.00 per year. Therefore, the annual cost for a commercial pesticide applicator to maintain his/her license is \$128.00, which is completely tax deductible.

If an individual chooses not to attend continuing education courses or does not obtain enough credits over the five-year recertification period he or she may retake the Core test and the category tests again to become recertified.

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The primary purpose of the commercial pesticide applicator certification program is to mitigate the adverse health effects (acute, allergic, and chronic) from occupational exposure to all pesticides; as well as prevent harm or injury to the public and the environment.

Commercial applications of pesticide are made in restaurants, schools, day care centers, nursing homes, hospitals, office buildings, private homes, campgrounds and other similar places, where the risk of exposure to people is great. Non-certified applicators often have little or no training about the toxicity of the substances or how to apply them. When pesticides are applied by un-trained and un-informed employees under less than strict supervision, it is less likely that they will be able to comply with pesticide laws, regulations and label directions concerning drift, runoff and volatilization of pesticides. By contrast, certified applicators have at least had an introduction to basic information about pesticide-related health hazards. Requiring commercial applicators who apply “over the counter” pesticides in these settings to obtain a license would at least mean that they have had the basic training, and misapplications should be reduced.

Operational experience has shown that the majority of pesticide misuse violations cited by the Department are for the misuse of “over the counter” pesticides. Of the 63 pesticide misuse violations issued by the Bureau of Pesticide Compliance (BPC) in 1995, 59 (94 percent) involved the misuse of an “over the counter” pesticide product.

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The cost of the licensing of individuals who apply pesticides in hospitals, food establishments, schools, day care facilities, nursing homes and private residences is extremely small in view of the health questions surrounding all pesticides (not just restricted use pesticides). While the Federal certification program goes far to reduce the adverse impacts from the use of pesticides, the Department feels that the added requirement for all commercial pesticide applicators to be licensed helps further the intended result of FIFRA.

In N.J.A.C. 7:30-6.3, the Department's requirement specifies an upgrade of the qualifications of all commercial pesticide applicators, to include 40 hours of verifiable "on-the-job" training and a standardized training course prior to making unsupervised pesticide applications. This exceeds Federal requirements that specify "Core" and application "Category" written certification testing for commercial pesticide applicators only when applying "restricted use" (most hazardous) pesticides. In 1974, when New Jersey began certification, the Department decided to require testing of all commercial applicators, even those who apply "over-the-counter" or "general use" pesticides because these applicators apply pesticides to properties other than their own. New Jersey felt that the risk from the application of even general use pesticides required certification. With the Department's enforcement experience, since that time, it has become clear that additional training and hands on experience are necessary to avoid some of the risks associated with pesticide application in such a populous State. The costs associated with a standardized training course and mandatory "hands on" experience, before becoming fully licensed, are minimal. This essentially codifies what responsible companies are

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already providing. The training materials would be approved by the Department for companies to provide the classroom training “in-house”, or through associations or trade groups. Thus, the classroom training costs would amount to no more than several dollars for each new employee. The practical training would in most cases, consist of a new employee traveling with a licensed applicator to witness or perform a specified number of applications to gain practical experience. The costs of training a new applicator with an estimated salary of \$10.00 per hour would be \$400.00 for a 40 hour work week. Since most companies are already providing written and practical training during the first week of employment (although not necessarily a full 40 hours) the net effect of codifying specifics on training provided is expected to cost businesses no more than \$100.00 per new employee, and substantially less (or nothing) for larger companies with extensive programs.

The benefits to this required improvement in applicator qualifications are several. Practical experience is a marked improvement over standards that allow an applicator to apply pesticides, often using very technical methods or equipment, after only reading materials and taking exams. There is less risk for mishaps that could result in environmental damage or health consequences for the applicator, customer or the public. Costs for increased health care and clean ups of spills and mis-applications would be avoided. The benefits of practical experience would thus outweigh the nominal costs of providing this training.

## 2. Application Records

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While the Department's pesticide application recordkeeping requirement is, in most areas, equivalent to the EPA minimum requirement for an approved applicator certification program, there are three areas in which the Department's requirements are more stringent. The analysis required by P.L. 1995, c.65. is set forth below.

At 40 C.F.R. Part 171.7(b)(1)(iii)(E), EPA requires that States with approved State Certification Plans have provisions requiring certified applicators to keep and maintain for a period of at least two years routine operational records containing information on the kinds, amounts, uses, dates and places of application of restricted-use pesticides.

N.J.A.C. 7:30-6.8(a) requires that commercial pesticide applicators maintain records of pesticide applications for the application of all pesticides, not just restricted use pesticides. In addition to the minimum recordkeeping requirements listed at 40 C.F.R. Part 171.7(b)(1)(iii)(E), the Department requires the following additional recordkeeping information be maintained:

At N.J.A.C. 7:30-6.8(a)6, the Department requires that the name of the person making the pesticide application be recorded on the application record.

At N.J.A.C. 7:30-6.8(a)8, the Department requires that termiticide application records contain the following information:

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- a diagram of the structure treated depicting the lower level of the structure;
- the location of the termite infestations(s) and reinfestations; areas treated; and significant items such as the location of wells, drainage systems, and streams and ponds which may be affected.

At N.J.A.C. 7:30-6.8(c), the Department requires that records of pesticide applications be maintained for a period of three years and all termiticide application records must be kept for a minimum of five years. The reason for requiring this information be maintained for three and five years respectively, as opposed to the EPA requirement of two years for all types of application is that operational experience has shown that enforcement problems typically occur within these time frames.

The overall benefit for maintaining this additional recordkeeping information is the protection of life and property and the environment. As noted previously, 94 percent of all pesticide misuse violations cited in 1995 were from the use of “over the counter” pesticides. In cases of pesticide poisoning and contamination it is important to be able to speak with the person who actually applied the pesticide in order to provide as much information as possible to give to medical personnel. This information also is beneficial if medical treatment is necessary due to occupational exposure to pesticides. It is of great benefit to be able to interview the individual who applied the pesticide for specific

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information, in the event that areas of pesticide contamination such as private drinking water wells or residential heating systems had to be remediated.

Conventional subterranean termiticide applications are more complicated than routine structural pesticide applications. There are many different techniques used, and many areas that can become contaminated since the termiticide is applied around and underneath structures and the amount of termiticide applied can be hundreds of gallons depending on the size of the structure being treated. The Department has found that the majority of the companies involved in the application of subterranean termiticides were already maintaining site-specific information. The establishment of the requirement to note significant items such as the location of wells, drainage systems, and streams and ponds that may be affected is based on operational experience with well contamination, and fish kills resulting from sump drainage into creeks and streams. It is an important pollution prevention measure for an applicator to know the intricacies of the structure being treated before applying hundreds of gallons of a pesticide in and around a home. This additional recordkeeping information is of great benefit when attempting to avoid the contamination of wells, heating systems, ponds and streams.

Many pest control companies are beginning to seriously look at the use of integrated pest management (IPM) techniques. IPM involves monitoring and the selection, integration and implementation of various pest control tactics based on thresholds derived from economic, ecological and social impacts. By selecting the most efficient combination of control tactics, the quantity of chemicals used can be reduced. In

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order to accomplish this, maintaining records of all pesticides applied is needed as a critical factor in evaluating the effectiveness of spraying programs.

Since the EPA mandates that states with approved commercial pesticide applicator certification plans make provisions for pesticide application recordkeeping, and since the majority of pest control companies are already maintaining most of the additional termiticide recordkeeping requirements, the cost of compliance with the additional requirements is extremely small. Given the benefit of reducing the risk of harm to people, property and the protection of the environment, the additional recordkeeping requirements are reasonable.

**N.J.A.C. 7:30-7**      **Pesticide Applicator Businesses**

N.J.A.C. 7:30-7, which pertains to the licensing of pesticide applicator businesses is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, no further analysis is required under P.L. 1995, c.65.

**N.J.A.C. 7:30-8**      **Private Pesticide Applicators**

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The Department's private pesticide applicator certification program has been approved by EPA and is adequate to implement the requirements of 40 C.F.R. Part 171. New Jersey has had an approved applicator certification plan since 1975.

The Department's current requirement is more stringent than EPA's program in two areas. The analysis required by P.L. 1995, c.65 is set forth below.

At N.J.A.C. 7:30-8.1, the Department's current regulation requires the certification of all private pesticide applicators who apply any pesticide. The current requirement exceeds the Federal requirement for private applicator certification which only requires certification for restricted use pesticides. The Department believes that the number of private applicators who use only general use pesticide products is a relatively small segment of the agricultural community. New Federal requirements under the "Food Quality Protection Act of 1996" are designed to reduce overall risk to people from exposure to pesticides, particularly residues in food. Requiring licensing of farmers who use any pesticide is designed to enhance the qualifications of those who apply pesticides to food crops and provide increased quality of food and less chronic exposure to pesticides. Also, any person who uses agricultural pesticides to produce an agricultural commodity must comply with State and Federal requirements for agricultural worker safety (WPS). Requiring licensing of farmers who use any pesticide will educate them about these requirements, and allow the Department to identify those farmers who must comply with the worker safety rules. The benefits, as noted above, are increased quality of food and less chronic exposure to pesticides for workers and consumers. The costs to

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the farmers are not substantial, consisting of some extra study and testing time and the time spent learning about newer or safer techniques and pesticides for re-certification. These costs apply to a relatively small segment of the agricultural community that is not yet certified. There is no charge for this certification.

At N.J.A.C. 7:30-8.8(a), licensed private pesticide applicators are required to maintain records of all pesticide applications. The EPA does not require private pesticide applicators to maintain application records of pesticide application. However, the United States Department of Agriculture (USDA) at 7 C.F.R. Part 110 does require private pesticide applicators to maintain application records of restricted use pesticides. The Department has entered into a cooperative agreement with the USDA under 7 C.F.R. Part 110.6 which gives states primacy, who have recordkeeping requirements considered comparable to those required by the USDA.

The overall benefit for maintaining this additional recordkeeping information is the protection of life and property, and the environment. As noted previously, 94% of all pesticide misuse violations cited in 1995 were from the use of “over the counter” general use pesticides. Pesticide residue in both raw and processed food has become a major concern. EPA concedes it is an area of high risk and low regulation in its report on comparative risks of various environmental hazards: “Unfinished Business: A Comparative Assessment of Environmental Problems.” The General Accounting Office (GAO) recounts poor monitoring of both imported and domestic food for unlawful levels of pesticide residues. A National Academy of Science (NAS) report estimated that

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pesticide residue in food may be responsible for as many as 20,000 additional cancer cases each year in the United States. The Federal Food Quality Protection Act of 1996 also recognized the risks of residues in food in its mandate to re-evaluate risks associated with each pesticide. Because of these facts the United States Attorney General, GAO, NAS, and various environmental organizations have called for increased sampling of the nation's food crop for pesticide residues.

Chemical analysis of agricultural commodities is very expensive (estimated at \$725.00 per sample). In lieu of widespread random sampling, the Department performs routine use inspections at the grower level. Records of pesticide applications are reviewed against the Federally-registered label to ensure that the grower is using the pesticide on the crop(s) listed on the label, to ensure that the grower is using the correct rate of pesticide application and that the crop is not harvested too soon after the application. Another benefit derived from maintaining records of all pesticide applications is the availability of factual data that will reduce consumer anxieties about food safety and environmental concerns.

There are direct benefits to the agricultural industry in maintaining accurate pesticide application records for all pesticides used. Through good recordkeeping, the grower can keep track of which treatments do or do not work and experiment with different application rates, products, techniques and growing conditions that will enable the grower to more effectively and efficiently monitor pesticide use. This can ultimately increase farm profits through better pesticide use planning.

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Pesticide recordkeeping is one of the major tools of integrated pest management (IPM). IPM involves monitoring and the selection, integration and implementation of various pest control tactics based on thresholds derived from economic, ecological and social impacts. By selecting the most efficient combination of control tactics, the quantity of chemicals used can be reduced. In order to accomplish this, maintaining records of all pesticides applied is needed to evaluate the effectiveness of spraying programs.

Another benefit of maintaining records for all pesticide applications involves the registration of pesticides by the chemical manufacturers. Currently, it is not cost effective for some chemical companies to produce the type of database necessary for re-registering certain “minor use” pesticides by the EPA, due to the small market for such pesticides (those used in relatively small amounts, often on crops that are a small part of the overall agricultural production). Many of the crops grown in New Jersey are considered minor crops. Information from such records could assist the EPA's evaluation of these pesticides and help the process to preserve registrations of minor use pesticides. The information can also be used to determine if a pesticide poses a significant risk of harm injury or damage to persons or the environment.

In the case of medical treatment, the ability to provide information to medical personnel on the use of pesticides that a person has been exposed to is another important benefit of maintaining records.

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Operational experience has shown that the majority of private pesticide applicators in New Jersey use restricted use pesticides at one time or another. Since the USDA mandates that records of restricted use pesticide use be maintained, the cost of compliance with the additional requirement to maintain records of applications for all pesticides applied is extremely small. Maintaining records of all pesticide applications is important when growers are asked to complete pesticide use surveys. Pesticide use surveys are an important tool used for the implementation of the National Environmental Performance Partnership System (NEPPS). Important environmental indicators measuring the amounts of pesticides used and where they are used, can be tracked through required records kept by the applicators. Surveys also help determine what environmental monitoring projects are needed.

Given the benefits of reducing pesticide use through the implementation of voluntary IPM techniques, the potential for increasing farm profits through better pesticide planning, the availability of information to medical personnel, aiding in the registration of minor use pesticides, measuring the impact that pesticides have on the environment through the NEPPS process, reducing consumer anxieties about food safety and, potentially saving lives, property and the protection of the environment, the additional recordkeeping requirement is reasonable.

**N.J.A.C. 7:30-9**

**Pesticide Exposure Management**

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The adopted rules at N.J.A.C. 7:30-9.2, 9.3, 9.8, 9.9, 9.10, 9.11, 9.12, 9.13, 9.15, 9.17 and 9.18 pertaining to mosquito/fly permits, aquatic pesticide permits, pesticide application and safety equipment, community or area wide notification, notification to apiarists, household or structural pest control notification, turf or ornamental plant pest control notification, general notification, reporting of pesticide spills, and accidental pesticide misapplication and spills are not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, no further analysis is required under P.L. 1995, c.65. The adopted rules at N.J.A.C. 7:30-9.5, 9.6 and 9.7 pertaining to pesticide storage and pesticide disposal are equivalent to the Federal standard. Accordingly, no further analysis is required under P.L. 1995, c.65.

**N.J.A.C. 7:30-10     Pesticide Use**

N.J.A.C. 7:30-10.1, 10.2(b) through (p), 10.3, 10.4, 10.5, 10.6 10.7, 10.8 and 10.9 are not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, no further analysis is required under P.L. 1995, c.65. N.J.A.C. 7:30-10.2(a) is equivalent to Section 2(ee) of FIFRA. Accordingly, no further analysis is required under P.L. 1995, c.65.

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**N.J.A.C. 7:30-11**      **Pesticide Grace Period Regulations**

N.J.A.C. 7:30-11 is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, no further analysis is required under P.L. 1995, c.65.

**N.J.A.C. 7:30-12**      **Agricultural Worker Protection**

The Federal Worker Protection Standard (WPS) (40 C.F.R. Parts 156 and 170) was published by the EPA in August 1992, and designed to significantly increase the protection offered to agricultural workers from pesticide exposure. N.J.A.C. 7:30-12 exceeds the Federal requirements, in certain respects, by requiring the Department to produce Chemical Fact Sheets and Informational Pamphlets intended for distribution to workers and handlers. The Federal/State comparison is as follows:

At 40 C.F.R. Parts 170.122 and 170.124 employers who use agricultural-plant pesticides must provide specific information to workers and handlers about pesticide applications. Federal law requires that the following information be posted at a central bulletin board for at least 30 days after the end of the restricted-entry interval (the restricted entry interval or “REI” is the time that must elapse after a pesticide application is made and before a worker may enter the treated area):

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1. The location and description of the treated area:
  - i. The crop; and
  - ii. The location of the application;
2. The pesticide brand or trade name, EPA Registration Number, and active ingredient(s) of the pesticide;
3. The time and date the pesticide is to be applied;
4. The restricted-entry interval for the pesticide and the exact date and time for safe re-entry by workers and handlers;

In addition to this information, a Pesticide Safety Poster must also be displayed containing the following information:

1. Help keep pesticides from entering your body. At a minimum, the following points shall be conveyed:
  - i. Avoid getting any on your skin or into your body any pesticides that may be on plants or soil, in irrigation water, or drifting from nearby applications.
  - ii. Wash before eating, drinking, using chewing gum or tobacco, or using the toilet.
  - iii. Wear work clothing that protects the body from pesticide residues, such as long-sleeved shirts, long pants, shoes and socks, and a hat or scarf.
  - iv. Wash/shower with soap and water, shampoo hair, and put on

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- clean clothes after work.
  - v. Wash work clothes separately from other clothes before wearing them again.
  - vi. Wash immediately in the nearest clean water, if pesticides are spilled or sprayed on the body. As soon as possible, shower, shampoo, and change into clean clothes.
  - vii. Follow directions about keeping out of treated or restricted areas.
2. There are Federal/State rules to protect workers and handlers, including a requirement for safety training.
- (c) Emergency medical care information. The name, address, and telephone number of the nearest emergency medical care facility shall be on the safety poster or displayed close to the safety poster.

The areas where the Code exceeds the requirements imposed by 40 C.F.R. Parts 170.122 and 170.124 are as follows:

At N.J.A.C. 7:30-12.6(e) and 12.14(e), the Department requires that employers who use agricultural-plant pesticides provide information to workers and agricultural-plant pesticide handlers concerning specific pesticide products. The required information is as follows:

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No person shall apply a pesticide to a farm or crop unless:

1. A fact sheet (when made available by the Department) is kept on file and made readily available to the workers for each pesticide product used or stored on the agricultural establishment;
2. Such fact sheets shall be approved by the Department and shall contain the following information:
  3. Chemical name(s);
  - ii. Common name(s);
  - iii. Acute health hazards;
  - iv. Chronic health hazards;
  - v. Symptoms of poisonings;
  - vi. Necessary personal protective equipment and practices;
  - vii. Re-entry times; and
  - viii. Emergency first-aid procedures;
4. The fact sheets in 2 above shall be written in English and in the native language(s) of the workers employed at the agricultural establishment;
5. The fact sheets in 2 above shall be written at no more than a fifth grade level; and
6. The provisions of 2 above shall not apply, if the Department is unable to supply the fact sheets and translations.

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At N.J.A.C. 7:30-12.7(i) and 12.15(f), the Department requires that users of agricultural-plant pesticides provide pesticide safety, health, and worker's rights information to farm workers and agricultural-plant pesticide handlers in the form of an educational pamphlet. The Department shall prepare the educational pamphlets, written at a fifth grade level, in English and in the native languages of the major groups of workers working in New Jersey. These pamphlets will be available to agricultural employers, owners, agricultural extension and other agricultural organizations. The pamphlet shall include, but not necessarily be limited to, the following areas:

1. General pesticide health and safety information, preventive practices in the field and in the worker residential area, signs and symptoms of pesticide poisoning, first aid and medical care, and methods of seeking assistance from State and Federal agencies, if a pesticide problem occurs;
2. The names and addresses of health providers in the vicinity who are trained in pesticide evaluation and have bilingual or multi-lingual staff; and
3. The rights of workers to obtain the pesticide information and training pursuant to N.J.A.C. 7:30-12, as well as rights under other Federal and State laws.

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Such pamphlets shall be presented to workers at least once annually as part of the orientation training required in N.J.A.C. 7:30-12.7(i), unless the workers already have an updated pamphlet in their possession.

At 40 C.F.R. Parts 170.130 and 170.230, employers who use agricultural-plant pesticides must provide pesticide safety training. The requirements are as follows:

General Requirements - Agricultural Employer Assurance. Under the Federal WPS, the agricultural employer shall assure that each worker required by this section to be trained, has been trained according to this section during the last five years, counting from the end of the month in which the training was completed. The training materials shall convey, at a minimum, the following information:

- Where and in what form pesticides may be encountered during work activities;
- The hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects and sensitization;
- The routes through which pesticides can enter the body;
- The signs and symptoms of common types of pesticide poisoning;
- Emergency first aid for pesticide injuries or poisonings;
- How to obtain emergency medical care;
- Routine and emergency decontamination procedures, including emergency eye flushing techniques;

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- The hazards from chemigation and drift;
- The hazards from pesticide residues on clothing;
- Warnings about taking pesticides or pesticide containers home; and
- Requirements designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including application and entry restrictions, the design of the warning sign, posting of warning signs, oral warnings, the availability of specific information about applications, and the protection against retaliatory acts.

If the agricultural worker is not trained, 40 C.F.R. Part 170.130(a)(3) requires that before a worker enters any areas on the agricultural establishment where, within the last 30 days a agricultural pesticide has been applied, or a restricted-entry interval has been in effect, the agricultural employer must ensure that the following pesticide safety information has been provided to the agricultural workers in a manner that they can understand, such as by providing written materials or oral communication or by other means:

- “1. Pesticides may be on or in plants, soil, irrigation water, or drifting from nearby applications.
2. Prevent pesticides from entering your body by:
  - i. Following directions and/or signs about keeping out of treated or restricted areas.

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- ii. Washing before eating, drinking, using chewing gum or tobacco, or using the toilet.
  - iii. Wearing work clothing that protects the body from pesticide residues.
  - iv. Washing/showering with soap and water, shampoo hair, and put on clean clothes after work.
  - v. Washing work clothes separately from other clothes before wearing them again.
  - vi. Washing immediately in the nearest clean water if pesticides are spilled or sprayed on the body. As soon as possible, shower, shampoo, and change into clean clothes.
3. Further training will be provided within 5 days.”

At N.J.A.C. 7:30-12.8(a) and 12.16(a), the Department also requires employers who use agricultural-plant pesticides to provide pesticide safety training. This exceeds its Federal counterpart by requiring “orientation” training annually in order to ensure that farm-specific information is understood by the employees. The requirements are as follows:

1. General Requirements - Agricultural Employer Assurance. The agricultural employer shall assure that each worker, required by this section to be trained, has been trained according to this section during the last five years, counting from the end of the month in which the training was completed. The agricultural employer for each agricultural establishment shall also assure that each worker has received an “orientation”

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training at least once each year for each agricultural establishment on which the worker works. The agricultural employer may delegate the responsibility for orientation training to the crew leader(s); however, the agricultural employer is responsible for assuring that the orientation is given.

2. Orientation training shall meet or exceed the following course content requirements:

- i. Re-entry, and how workers are informed about re-entry;
- ii. The location of hand washing facilities, clean clothes and protective clothing;
- iii. Where to obtain immediate decontamination;
- iv. A review of bulletin board information;
- v. The availability of pesticide fact sheets; and
- vi. Handout of the education pamphlet required pursuant to N.J.A.C. 7:30-12.8(h) and 12.16(f), when available.

It is estimated from the 2003 NJDEP/Pesticide Control Program Pesticide Use Survey that there are a total of 246 agricultural plant pesticides used by New Jersey growers which would trigger compliance with the Federal WPS. These 246 agricultural-plant pesticides can be placed into approximately 12 chemical classes (such as organochlorines, organophosphates, carbamates, chlorophenoxy herbicides and thiocarbamates). The toxicology of pesticides within a chemical class is very similar.

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Although the chemical name(s) and common name(s) of a pesticide may be different, the necessary personal protective equipment and practices, re-entry times, acute health hazards, chronic health hazards, symptoms of poisonings, and emergency first aid procedure information which must be available to farm workers on fact sheets are similar for pesticides in a particular chemical class. Therefore, only 12 chemical fact sheets were developed for the 246 agricultural-plant pesticides used by New Jersey growers. The information for these chemical fact sheets was obtained from reference material available in-house. Each worker protection fact sheet took 16 hours to produce. The estimated average annual cost to the Department of a Program employee is \$87,468 (\$47.00/hour). This estimate takes into account cost of living and salary increments, fringe benefits, and indirect costs. The cost of developing the 12 fact sheets for the 246 agricultural plant pesticide products used in New Jersey was \$9,024.

The cost of translating one page into another language was \$100.00/page. The total cost of translating the 12 pesticide fact sheets into the 11 primary languages spoken by farm workers in New Jersey was \$13,200.

The cost of printing one pesticide fact sheet is estimated at \$.03/copy. The estimated number of establishments that require compliance with the WPS is 2,500. Therefore, the cost to provide each establishment with a set of the 12 pesticide fact sheets was estimated at \$900.00.

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The total cost that the Department has incurred to provide establishments required to comply with the worker protection standard with the pesticide fact sheets required in N.J.A.C. 7:30-12.6(e) is \$23,100.

The cost of producing the pesticide fact sheets was totally born by the Pesticide Control Program when money became available in 1998 and 1999. There was no cost to the regulated community. The grower is only responsible for maintaining these fact sheets on file and providing them upon request. If the Department does not supply the grower with pesticide fact sheets, the grower is exempted from complying.

The Program also developed educational pamphlets for pesticide applicators. It is estimated that the development and printing of the agricultural-plant pesticide handler/worker information pamphlet cost approximately \$30,000.

The cost of printing the pesticide educational pamphlet was \$.22 per copy. To provide each of the 40,600 workers and agricultural-plant pesticide handlers with a pesticide educational pamphlet, the cost was \$8,900.

The cost of producing the pesticide educational pamphlets was totally born by the Pesticide Control Program when money became available in 1998 and 1999. There was no cost to the regulated community. The grower is only responsible for providing these pamphlets to agricultural-plant pesticide handlers who apply pesticides and workers at his

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establishment. If the Department does not supply the grower with pesticide educational pamphlets, the grower is exempted from complying.

The training of farm workers and agricultural-plant pesticide handlers under the Federal WPS requires that the grower either purchase a video tape to be viewed by the farm workers and agricultural-plant pesticide handlers, or a flip chart containing the information to be presented by the trainer, which is usually the grower. EPA estimates that 3.9 million farm workers and agricultural-plant pesticide handlers must be trained under the requirements of the Federal WPS. EPA estimated that the cost to train these farm workers and agricultural-plant pesticide handlers would be \$11.1 million. The cost of training a worker or pesticide handler is therefore estimated at \$2.85 per worker.

$$\$11,100,000 \text{ divided by } 3,900,000 \text{ farm workers/ handlers} = \$ 2.85$$

It is estimated that there are 40,600 farm workers and pesticide handlers in the State of New Jersey. The estimated cost to New Jersey growers for training farm workers and agricultural-plant pesticide handlers to comply with the Federal WPS is \$115,710.

The orientation required on an annual basis for farm workers and agricultural-plant pesticide handlers is not as extensive as the five year retraining required by the Federal WPS. It is anticipated that there will be minimal to no extra cost to the grower to provide annual orientation training. The grower would have the video or flip chart purchased from the required initial federally mandated training, and the pesticide fact

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sheets and the educational pamphlet have been provided by the Department on an ongoing basis. The orientation would consist of a “walk through” of the farm to show the worker/handler where the safety information is found and the location of the decontamination site and washing facility.

The use of agricultural-plant pesticides in New Jersey potentially exposes approximately 43,600 members of the agricultural workforce, including hired workers, unpaid workers (presumably family members), and agricultural establishment owner/operators, to risks of adverse health effects. Eighty-one percent of the agricultural pesticides applied in New Jersey are applied to crops requiring intense hand labor (such as apples, peaches, blueberries, cranberries, tomatoes, potatoes and leafy vegetables). This is 38 percent above the national percentage. Agricultural-plant pesticide handlers are persons who mix, load, apply, or otherwise come in contact with pesticides through related pesticide use activities. The number of agricultural plant pesticide handlers in New Jersey is approximately 1,500. There are approximately 1,757 private pesticide applicators that are licensed by the NJDEP to apply restricted use pesticides. Agricultural farm workers do not handle pesticides directly, but they may be exposed to agricultural-plant pesticides (through accidental contact, mainly with drift or misdirected applications or direct contact with treated agricultural plants). The number of agricultural farm workers in New Jersey is estimated at 40,000.

The Federal WPS is designed to mitigate for these workers and handlers the adverse health effects (acute, allergic, and delayed) from occupational exposure to

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agricultural-plant pesticides. While the Federal WPS goes far to reduce worker exposure to pesticides, the Pesticide Control Program believes that the added requirements New Jersey has promulgated has helped further the intended result of the WPS.

EPA believes that many incidents of acute and allergic pesticide effects on agricultural workers and pesticide handlers are not diagnosed as such by a physician. Such incidences may vary in severity from skin irritations and headaches to life threatening cases. The distribution of such effects is unknown, and there is considerable uncertainty about the number of such incidents. EPA has identified three principal reasons for non-diagnosis and treatment:

(1) Workers/handlers must perceive they have treatable symptoms. In order for workers/handlers to have such a perception they would need to be both aware they were being exposed to pesticides and aware of the signs and symptoms of pesticide poisoning. EPA believes that many workers and handlers do not know the typical signs and symptoms of pesticide poisoning, and that many workers do not know if and when they are exposed to pesticide residues.

(2) Workers must seek medical attention. Except in life threatening emergencies, many pesticide-related acute effects will gradually disappear without medical intervention. For example, the cholinesterase enzyme, which, when inhibited, causes some of the more common acute symptomatic poisoning symptoms, will gradually (depending on the family of pesticide, severity, and repetition of exposure), regenerate

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without treatment. Allergic, dermatologic, and ophthalmologic effects will gradually disappear when casual exposure to the pesticide diminishes. Therefore, many agricultural workers with treatable symptoms may not seek physician care. Furthermore, agricultural workers' access to medical care is poor. A GAO report states:

“Hired farm workers have limited access to Medicaid assistance. Those migrant farm workers approved for Medicaid are often unable to find a health provider who will treat a patient with an out-of-state Medicaid card. Most migrant farm workers do not receive medical services provided by the Migrant Health Program's rural health clinics. The Department of Health and Human Services estimates that because of budget constraints, the program serves less than 15 percent of the nation's migrant farm workers. Poor and uninsured farm workers have reduced access to physician care and hospital services. About half of these workers and their families are estimated to be below poverty level, with the family median income between \$7,500 and \$10,000 a year.”

(3) The physician must diagnose the symptoms as being pesticide related. Physicians and other health care providers often have difficulty in ascertaining the cause of pesticide illnesses and injuries, since the symptoms mimic other illnesses and injuries. There are more than 240 agricultural-plant chemical active ingredients used in New Jersey which may be combined with 1,000 “inert” ingredients (which are often chemicals with their own potential health effects). These products are formulated in many different ways.

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Thus the combination of active and inert ingredients to which a person may be exposed number in the thousands.

A second concern regarding correct medical diagnosis is that medical personnel rarely receive training in the recognition and management of pesticide poisonings during their formal schooling. A report published by the Pesticide Farm Safety Center Advisory Panel states that there is a great need for more training of health care professionals on the recognition and management of pesticide illnesses. The report explains: “The lack of information about pesticide related health problems is symptomatic of a lack of training in medical and public health schools in the broad field of occupational and environmental medicine and more instruction in this discipline should be included in the medicine curriculum.”

In addition to acute and allergic adverse health effects, pesticides are known to cause delayed adverse health effects. Some of the delayed effects caused by pesticides include:

1. Chronic effects, including tumors, cancer, and genetic changes;
2. Developmental and reproductive effects, including birth defects, miscarriages, stillbirths, infertility, sterility, and impotence; and

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3. Systemic effects, including toxic effects on the heart and circulatory system, brain and nerve system, skin, lungs and respiratory system, liver and kidneys.

Unlike acute and allergic effects, where the symptoms usually appear soon after casual exposure, evidence of delayed adverse effects from pesticide exposure almost always emerges long after the casual exposure(s). This, coupled with the fact that symptoms of pesticide-caused delayed adverse effects are not unique, results in a predictable lack of hard data as to the extent and magnitude of pesticide-caused delayed adverse effects. Studies have demonstrated that many pesticides cause adverse effects in animals, and some pesticides have been observed to have adverse effects on humans.

The Department is concerned that the Federal WPS requires farm workers and pesticide handlers to be informed of the possibility of delayed effects from exposure to pesticides only during the training course required to be given once every five years. The annual farm orientation will help address this concern.

40 C.F.R. Part 170.130 - Pesticide Safety Training requires that training be given to farm Workers and agricultural-plant pesticide handlers once every five years. The Code requires orientation training to be given on an annual basis for the following reasons:

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1. Many of the farm workers in New Jersey are transient and do not return to the same farm year after year. The location of hand washing facilities, and sites to obtain immediate decontamination are different at each farm.
2. The growing season in New Jersey is relatively short in comparison with the southern and some western states. The need for farm workers and pesticide handlers to be reminded on an annual basis about re-entry, and bulletin board information required in the Federal WPS and the availability of pesticide fact sheets, is greater due to the loss of familiarity.
3. Annual training should reinforce workers' recognition of the need to heed warnings about areas that are unsafe to enter.
4. Annual training should reinforce workers' use of decontamination facilities by informing them of the importance of washing thoroughly and often, even when the presence of pesticide residues cannot be readily detected.
5. The educational pamphlet that must be provided to pesticide workers and handlers is provided to the grower by the Department at no cost to the grower.
6. The Federal WPS allows workers trained on one farm to go to another farm without receiving information on the location of pesticide

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information and decontamination sites at the new farm. The orientation requirement will address this concern.

The Federal WPS has substantially reduced the risk of farm worker and pesticide handler exposure to pesticides through exposure mitigation measures. The Department is concerned that the Federal WPS does not address problems associated with workers and handlers who may have been exposed to pesticides despite the implementation of this standard. The current Code adopted by the Department attempt to address this issue. While these and related benefits cannot be adequately quantified with available data, the Department believes that:

- Requiring the grower to have pesticide fact sheets available to farm workers and agricultural-plant pesticide handlers;
- Providing pesticide educational pamphlets to farm workers and agricultural-plant pesticide handlers; and
- Requiring the grower to provide annual orientation training for farm workers and agricultural-plant pesticide handlers strengthens the purpose of the Federal WPS and advances the stated concerns of the Department for the following reasons:

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- (1) These regulatory additions will aid farm workers and pesticide handlers to determine if and when they have been exposed to pesticide residues.
- (2) Farm workers and agricultural-plant pesticide handlers will have health and safety information in their possession as opposed to being posted at a central bulletin board location. Agricultural-plant pesticide handlers and workers will also be able to obtain specific health and safety information from the grower regarding the specific pesticide to which they may have been exposed, as opposed to general information about exposure to pesticides.
- (3) With this information in-hand, the treating health care professional would have additional information concerning the pesticide involved. This additional information not required in the Federal WPS will aid in the diagnosis of symptoms and provide emergency first aid procedures.
- (4) The Federal worker protection standard requires only posting the name and location of the nearest medical facility and for the grower to provide the worker/handler transportation to a medical facility. The facility to which the worker/handler transported to may or may not provide medical services. The addition to the Federal WPS requiring the grower to provide pamphlets with the names and addresses of health providers in the vicinity, who are trained in pesticide exposure evaluation and have

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bilingual or multi-lingual staff, will ensure that the workers/handlers are transported to a facility which will provide medical care.

- (5) It is expected that making farm workers and agricultural plant-pesticide applicators aware that even casual contact with specific pesticides can affect their health, would help in avoiding exposure to these pesticides and eventually avoiding potentially important numbers of cancer cases, serious developmental effects, stillbirths and neurotoxic effects. The Program believes that information concerning delayed effects of specific pesticides is very important and should be made available to the worker, pesticide handler, and health care professional to better diagnose and treat these workers.

EPA believes that the protections afforded in the Federal WPS will achieve 80% efficiency in reducing pesticide related illnesses and injuries for farm workers and agricultural-plant pesticide handlers. The Program is convinced that the additional State worker protection regulations will not only increase the efficiency of the Federal rule, but will provide additional benefits to that segment of the occupational workforce who will still experience pesticide related illnesses and injuries despite preventive measures.

The benefits derived from the adopted rules exceeding the requirements of the Federal WPS come as a result of minimal effort and little to no expense to the regulated community. The cost to the Department for implementing worker protection standards

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that exceed the Federal standard is estimated at \$60,000. There is minimal to no extra cost to the grower to provide annual orientation training. The grower would have the video or flip chart purchased from the initial Federally mandated training, and the pesticide fact sheets and the educational pamphlet are provided by the Department.

The Program believes that the benefits to society from avoided incidences of acute, allergic and delayed adverse effects from occupational exposures to agricultural pesticides, and proper medical attention when exposures result, exceed the cost attributable to the State rule.

New Jersey, being the most densely populated state in the nation, must be especially alert to any possibilities of adverse effects on man or the environment due to pesticide use and regulate them accordingly. While Federal requirements are designed to be applicable throughout the country, New Jersey's population density demands more care be taken in the application of pesticides.

The benefits of the Department's Pesticide Control Code rules to the State's citizens and to the environment are also described above in the Social Impact and Environmental Impact. The costs associated with the State program are described in the Economic Impact.

**N.J.A.C 7:30-13      Integrated Pest Management in Schools**

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N.J.A.C. 7:30-13, which details the requirements for schools to use Integrated Pest Management techniques to control pests, is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, no further analysis is required under P.L. 1995, c.65.

**Full text** of the readopted rules may be found in the New Jersey Administrative Code at N.J.A.C. 7:30.

**Full text** of the adopted amendments follows (additions to the proposal are indicated in bold face with asterisks **\*thus\***; deletions from the proposal are indicated in brackets with asterisks \*[thus]\*);

## SUBCHAPTER 1. SCOPE AND DEFINITIONS

### 7:30-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

“Aquatic pesticide” means any pesticide that contains labeling instructions indicating that the pesticide is intended for use on aquatic sites, except for those uses listed

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below. If a pesticide label contains both exempted and non-exempted aquatic uses, the pesticide shall still be considered an aquatic pesticide for the purposes of this chapter:

1.-5. (No change.)

6. Pesticides labeled as mosquito larvicides whose only active ingredients \*[(such as]\* **are**\* monomolecular surface films.\*] act by physical action and not chemical toxicity]\*

\*[“Underground facility,” as defined at N.J.A.C. 14:2-2.1, means any public or private personal property which is buried, placed below ground, or submerged on a right-of-way, easement, public street, other public place or private property and is being used or will be used for the conveyance of water, forced sewage, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, or traffic control, or for the transportation of a hazardous liquid regulated pursuant to the provisions of 49 U.S.C. §§ 60101 et seq., but does not include storm drains or gravity sewers. For the purpose of this definition, “personal property” means a single conduit, or multiple conduits of the same facility type within a rigid envelope such as a concrete envelope. This envelope shall be considered one facility for the purposes of these rules, except as otherwise specifically provided.]\*

7:30-9.10 Notification: community or area wide applications

(a) (No change.)

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(b) No person shall apply any pesticide on a community or area wide basis unless prior notification of the proposed application has been given to persons residing in the vicinity of the proposed target site.

1.-2. (No change.)

3. The notification required in (b)1 above shall contain at least:

i. (No change.)

ii. **\*To the extent known at the time of the advertisement,\*** **\*[T]he \*street name or names of streets at the nearest intersection (when this is beneficial in identifying the location) and the name of the municipality and county\*** **\*[location] \*where the application is taking place\*** **\*[of the application specifically the street name, or names of the streets at the nearest intersection, municipality and county]\*;**

iii.-xi. (No change.)

4.-8. (No change.)

(c)-(e) (No change.)

#### **7:30-10.4 Restrictions on use of termiticides**

(a) No person shall make a commercial application of a pesticide for control of termites unless\*[:]\*

**\*[1.]\***

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\*[A]\* \*a\*t least one applicator certified and licensed in the termite subcategory as described in N.J.A.C. 7:30-6.3(a)7ii is present at the application location for the duration of the application and within line of sight of the person making the application. This requirement shall not apply to the monitoring and maintenance of termite baiting stations or the placement of pesticide active ingredient therein by a properly trained and licensed commercial pesticide operator, working under the direct supervision of a responsible commercial pesticide applicator certified in the termite subcategory.

\*[2. Pursuant to The Protection of Underground Facilities: One-Call Damage Prevention System rules at N.J.A.C. 14:2-4.1, no person shall commence excavating until notification has been made to the Board of Public Utilities “Protection of Underground Facilities: One-Call Damage Prevention System” prior to engaging in an excavation activity, specifically for the purpose of obtaining markouts for underground facilities.]\*

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Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirement of Executive Order 27 (1994) and N.J.S.A. 52:14B-23, permit the public to understand accurately and plainly the purposes and expected consequences of the readoption with amendments. I hereby authorize this adoption.

Date: \_\_\_\_\_

\_\_\_\_\_

Lisa P. Jackson  
Commissioner