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ENVIRONMENTAL PROTECTION

COMPLIANCE AND ENFORCEMENT

Pesticide Control Code

Adopted Amendments: N.J.A.C. 7:30-1.2, 3.2, 3.12, 4.4, 5.2, 6.2, 6.8, 6.11, 6.12, 6.13, 7.3, 7.5, 8.2, 8.8, 8.12, 9.11, 11.1, 12.1 through 12.6, and 12.8 through 12.22

Adopted Repeal and New Rule: N.J.A.C. 7:30-11.2

Adopted New Rules: N.J.A.C. 7:30-11.1 and 11.3 through 11.11

Proposed: May 20, 2019, at 51 N.J.R. 661(a).

Adopted: March 12, 2020, by Catherine R. McCabe, Commissioner, Department of Environmental Protection.

Filed: March 12, 2020, as R.2020 d.042, **with non-substantial 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: 03-19-04.

Effective Date: April 6, 2020.

Expiration Date: March 20, 2022.

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The Pesticide Control Act (Act), N.J.S.A. 13:1F-1 et seq., authorizes the Department of Environmental Protection (Department) to formulate and promulgate, amend, and repeal orders, rules, and regulations prohibiting, conditioning, and controlling the sale, purchase, transportation, labeling, use, and application of pesticides that cause, or may tend to cause, adverse effects on people or the environment by any person within this State. The Pesticide Control Code, N.J.A.C. 7:30, was originally adopted on January 18, 1974, and is based, in part, on the U.S. Environmental Protection Agency (EPA) regulations under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq. (FIFRA). Through a FIFRA-authorized agreement, the EPA delegated enforcement of pesticide laws to the Department. The Department's rules must be at least as stringent as the Federal requirements; the Department may regulate the sale or use of pesticides, provided the Department does not allow any sale or use prohibited by FIFRA.

The Department is adopting amendments to N.J.A.C. 7:30-12 to conform to recently adopted EPA rules on agricultural worker protection. These adopted rules enhance the protections provided to agricultural workers, pesticide handlers, and other persons, by strengthening the training and notification requirements, pesticide safety and hazard communication information, use of personal protective equipment, and the providing of supplies for routine washing and emergency decontamination.

The Department is adopting amendments to N.J.A.C. 7:30-11, Pesticide Grace Period Regulations, to establish a penalty matrix and include a process for enforcement of the rules

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through an administrative process and provide for criminal prosecution of violations in accordance with the Environmental Enforcement Enhancement Act, P.L. 2007, c. 246, which amended the Act.

Amendments to the examination and certification provisions of N.J.A.C. 7:30-3, 5, 6, and 8 allow a Department-approved third-party to administer examinations, and to charge a fee for the service it provides; the amendments also authorize the Department to charge a fee for examinations.

Lastly, the Department is amending N.J.A.C. 7:30-9.11, Notice to apiarists (beekeepers), to extend the existing requirement for notice of pesticide application for beekeepers of honeybees to also include beekeepers of native bees. These amendments conform with N.J.S.A. 13:1F-4.1, which was enacted by the Legislature in 2018.

In addition to the above four categories of amendments, the Department is correcting grammar and punctuation and updating Department contact information.

This notice of adoption can be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules>.

Summary of Hearing Officer's Recommendation and Agency Response:

The Department held a public hearing on June 25, 2019, at the Department's Public Hearing Room, 401 East State Street, Trenton, New Jersey. Three people provided oral

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comments. John Orrok, Rule Manager for the Bureau of Pesticide Compliance, served as hearing officer. After reviewing the comments received during the public comment period, the hearing officer has recommended that the rulemaking be adopted with the changes as described below in the Summary of Public Comments and Agency Responses and the Summary of Agency-Initiated Changes. The Department accepts the hearing officer's recommendations.

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

Department of Environmental Protection

Office of Legal Affairs

ATTN: Docket No. 03-19-04

401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses:

The following people submitted written comments and/or gave oral testimony on the proposal:

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1. Ben Casella, New Jersey Farm Bureau
2. Leonard Douglan, New Jersey Pest Management Association
3. Patricia Hastings, Rutgers University New Jersey Agricultural Experiment Station
4. Shirley Kline, New Jersey State Board of Agriculture
5. Mary Lamielle, National Center for Environmental Health Strategies
6. Jean Pubileee
7. Mara Silgailis, Clean Water Action
8. Rick Suydam, New Jersey Farm Bureau
9. Jeff Tittel, New Jersey Sierra Club
10. Changlu Wang, Rutgers University
11. Pamela Wentworth, Department of Children and Families

A summary of the timely submitted comments and the Department's responses follows.

The number(s) in parentheses after each comment identify the commenter(s) listed above.

General Concerns

1. COMMENT: The record of the Department in protecting people of this State from dying from poisons used by farmers and manufacturers is dismal. The allowance of glyphosate, pfas,

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atrazine, chlorpyrifos, and other poisons on food to be fed to people, animals, and birds is disgraceful profiteering. The close association of regulators with the industry that profits from pesticides is corrupt. There is no real enforcement and the penalties are very low and invite corruption and use of poison on our food. It is not just agricultural workers that need protection, it is everyone in this State. All written comments on this rule should be published on the website so that the public is aware of what the industry is writing to the Department. (6)

RESPONSE: The Department has a long history of strengthening and improving the regulation of pesticides in the State since the founding legislation was passed in 1971 (Pesticide Control Act of 1971). Regulations controlling the use of termiticides, restricting certain pesticides in New Jersey for use only by licensed applicators, expansive public and consumer notification of pesticide use, and School Integrated Pest Management (IPM) are just several examples of how protections have been enhanced since 1971.

The adopted rules increase the maximum penalty the Department may assess for pesticide violations from \$3,000 to \$25,000 per day of the violation. In addition, if a pesticide violation is criminal in nature, the adopted rules provide for a maximum fine of \$50,000 per day, or imprisonment, or both. The Department believes this is sufficient deterrence for preventing most violations of pesticide regulations.

The Department solicits input from interested parties regarding pesticide regulations, including the general citizenry, environmental groups, and industry representatives.

Government records, including records of the Department's Bureau of Pesticide Compliance

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and Enforcement, are available in accordance with the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., and the Department's General Practice and Procedure rules, N.J.A.C. 7:1D.

2. COMMENT: Recent experience with the Department shows that enforcement is nearly nonexistent. (5)

RESPONSE: The Department investigates, to the best of its ability, all complaints related to pesticides received by the public. The Department has a robust enforcement program for pesticides, with deterrence enhanced by the adopted base penalties and a penalty matrix with a maximum penalty of \$25,000 per day, per violation.

3. COMMENT: These new rules are supported, especially the penalties. Many violations are happening in suburban North Jersey; for instance, workers are not wearing gloves when applying lawn care pesticides or insecticides. These penalties and other regulations requiring notification are needed to enforce pesticide regulations. (7)

RESPONSE: The Department acknowledges the commenter's support for the adopted rules.

4. COMMENT: The Department of Children and Families licenses child care centers in accordance with N.J.A.C. 3A:52, formerly N.J.A.C. 10:122. Since 1988, they have been called "child care centers" in the Department of Children and Families' rules. The pesticide rules refer

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to “day care centers” at N.J.A.C. 7:30-1.2 in the definition of “school,” and at N.J.A.C. 7:30-6.1(a)2iv. It is recommended that the Department amend these two sections to reference “child care centers.” (11)

RESPONSE: The suggested modification is beyond the scope of this rulemaking. The Department will consider changing “day care center” to “child care center” when it next amends the rules.

5. COMMENT: The comment period timing (the July 19 deadline for comments and June 25 public hearing) occurs during the busiest time of the year for the agricultural industry. It is respectfully requested that the Department engage in additional dialogue with stakeholders in light of this concern prior to final adoption of the rules. (8)

RESPONSE: The Department acknowledges that the spring and early summer months are a busy time of year for many sectors of the regulated community. It is necessary, however, for the Department to continue, throughout the year, its mission to protect the environment, which includes rulemaking. Each season of the year has its scheduling challenges. The Department provided a 60-day comment period, and held a public hearing on the proposed rules, consistent with the requirements of the Administrative Procedure Act.

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6. COMMENT: Each day, through scientific research, it becomes painfully more clear of the negative health impact of pests and their associated allergens and pathogens, not to mention the ever-expanding threat of invasive species. Zika virus and Lyme disease caused by mosquitoes and ticks are of great concern to the public, as well as health officials. Some of the same insecticides needed to combat these pests can also have an adverse effect on pollinators, if not used properly. They should be left in the hands of trained pest management professionals who use these products both to combat interior, as well as outside pests. It is urged that the State consider science and professional involvement when considering legislation in regard to neonicotinoids. (2 and 10)

7. COMMENT: Chlorpyrifos is primarily available for agricultural and nursery use, but there are significant concerns that its restriction for other uses, for example, buildings and homes, may be reversed according to some experts. The use of chlorpyrifos should be banned in New Jersey. (5)

8. COMMENT: Neonicotinoids, especially imidacloprid, and also the insecticide chlorpyrifos are harmful to human health, as well as destructive to the bee population. It is recommended that the State prohibit the use of all neonicotinoids. Chlorpyrifos is an insecticide that especially threatens the health of children and pregnant women since it's a neurotoxin. There have been cases in which farmworkers who were exposed to the chemical have gotten sick from it. Chlorpyrifos is also dangerous to wildlife, including our threatened bee population. Hawaii has

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already banned this harmful insecticide, and it's critical for the health and safety of our children and farm workers that New Jersey does too.

It is not sufficient that the State follow the Federal rules. The Department needs to go beyond Federal regulations to ensure that dangerous chemicals like sulfoxaflor, chlorpyrifos, and other dangerous pesticides do not harm human health and further threaten New Jersey's bee population. (9)

RESPONSE TO COMMENTS 6, 7, AND 8: The Department is not amending existing rules or proposing new rules to prohibit or otherwise restrict individual pesticides or classes of pesticides. Comments regarding the use and regulation of specific pesticides are, thus, beyond the scope of this rulemaking.

Agricultural Worker Protection

9. COMMENT: The Department is correct to strengthen protections for farmworkers. (5)

RESPONSE: The Department acknowledges the commenter's support for the rules.

10. COMMENT: The proposed amendments to the Pesticide Control Code, N.J.A.C. 7:30, regulating pesticide use do not go far enough in protecting our agricultural workers. (9)

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RESPONSE: The adopted amendments are a significant step in agricultural worker protection.

The Federal worker protection enhancements contained in the adopted rules will improve safety training for workers and handlers of pesticides, increase safety equipment requirements, including explicit instructions and requirements for respirator training, fit tests, and medical evaluations to determine a pesticide handler's fitness to wear a respirator, improve pesticide safety and hazard communication to farm employees, and improve pesticide decontamination requirements.

11. COMMENT: Assistance is needed to help farm businesses comply with the Occupational Safety and Health Administration (OSHA)-respiratory protection requirements. Agriculture is unique in that it is generally in rural areas with less opportunity for assistance unlike other businesses. Any assistance the Department can provide and help in finding venues for training is appreciated. (1)

RESPONSE: The Department is committed to educational assistance to help the regulated community understand and comply with both new and existing requirements including OSHA respiratory protection. It will continue to work with the New Jersey Agricultural Experiment Station of Rutgers University to help deliver needed outreach and training to the farming community.

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12. COMMENT: The Department's rules should mimic the Environmental Protection Agency (EPA) requirements. It becomes very difficult for farmers when there are multiple regulations on different levels. When farmers are required to meet stricter standards than at the Federal level, it creates a competitive and financial disadvantage for them in New Jersey. Although the Department mostly follows the EPA requirements for agricultural worker protection, the Department proposes to maintain the three-year State requirement for recordkeeping rather than the two years required by the EPA. Records include pesticide application records, safety data sheets, rosters of workers trained, rosters of handlers trained, and fit tests and medical evaluations for respirator training. The Department's record retention requirements should match the Federal requirement of two years. (1 and 8)

RESPONSE: The Department has had a longstanding record retention requirement of three years for pesticide application records and lists of pesticide handlers employed at farms. The adopted rules keep the existing three-year record retention requirement and apply it to the safety data sheets, specific information about pesticide applications, training rosters for workers and handlers, and records for respirator training, fit test, and medical evaluation. Since the requirement is consistent with the existing requirements, it should not be overly burdensome for farm owners. As discussed in the Economic Impact in the notice of proposal, 51 N.J.R. at 668, Department inspectors have observed during routine inspections that many farm owners retain records longer than three years.

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As the Department discussed in the Federal Standards Analysis of the notice of proposal, 51 N.J.R. at 670, effects or illnesses that a handler or worker may suffer as a result of pesticide exposure are not always manifested immediately or soon after exposure. Retaining records of pesticide use, safety information, or respirator-related records for three years increases the Department's ability to effectively investigate a potential latent pesticide-related health effect.

13. COMMENT: Proposed N.J.A.C. 7:30-12.6 and 12.14, which require farm owners or handler employers to maintain copies of the safety data sheets for pesticides used on farms, should require pesticide dealer companies to provide these sheets to farmers at the time of purchase. (8)

RESPONSE: The safety data sheets are widely available, including from websites of the pesticide manufacturers and online resources, such as the Pesticide Educational Resource Collaborative. In addition, although not mandated, it is reasonable that a pesticide dealer, upon request, will provide a purchaser of pesticides this information as a condition of the purchase. Should the Department determine in the future that the safety data sheets are not readily available to farm owners or handler employers, the Department may reconsider the need to require pesticide dealers to provide this information to purchasers.

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14. COMMENT: The Summary to the proposed rule describes an exemption of dust or mist filtering masks from OSHA requirements for respirator fit testing, training, and medical evaluation. This would be consistent with changes the EPA proposed to its 1992 Worker Protection Standard, but this exemption was deleted from the final 2015 Worker Protection Standard. Although this exemption was not found specifically restated in the proposed rule (N.J.A.C. 7:30-12.4 and 12.20), this exemption is contrary to 29 CFR 1910.134. The purpose in bringing this to the Department's attention is to ensure that this exemption is not adopted.

The use of the terms "dust or mist filtering masks" or "dust/mist filtering mask" in the notice of proposal Summary and in the rule is unclear. This is an obsolete description. It is suspected these terms are used for a "filtering facepiece respirator" (FFR). FFRs are a type of non-powered air-purifying respirator where a particulate filter is an integral part of the facepiece, or the entire facepiece is composed of the filtering medium. OSHA requires fit testing for any tight-fitting respirator. Tight-fitting respirators include: FFRs, re-usable respirators with replaceable cartridges and/or filters, and respirators with tight-fitting facepieces used with powered air purifying, supplied air systems, and self-contained breathing apparatus. Thus, fit testing of FFR is required under 29 CFR 1910.134. (3)

RESPONSE: The Department is modifying the rules on adoption to use the term "filtering facepiece respirator" where appropriate. The Department is adding clarifying language at N.J.A.C. 7:30-12.20(d) and (f) to more accurately describe respirators.

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Neither the proposed rules nor the adopted rule exempts filtering facepiece respirators from fit testing, training, and medical evaluation. OSHA rules at 29 CFR 1910(c)(2)(ii) allow employers to be exempt from a written respiratory program for those employees whose only use of respirators involves the voluntary use of filtering facepiece respirators (commonly known as “dust masks”). The Department acknowledges that the notice of proposal Summary implied a broad exemption for this type of respirator; however, the rule text does not provide an exemption. In adopting the OSHA rule by reference, the Department, thus, adopts only the narrow exemption for voluntary use of filtering facepiece respirators found in the OSHA rule.

15. COMMENT: As proposed, the replacement criteria for gas- or vapor-removing canisters or cartridges are less protective than current regulations in certain circumstances. In particular, proposed N.J.A.C. 7:30-12.20(f)6v changes the requirement to change chemical cartridges from “at the end of each day’s work period” to “at the end of eight hours of cumulative use.” OSHA requires that change schedules per 29 CFR 1910.134(d)(3)(iii)(B)(2) be established by the employer for the replacement of chemical cartridges. This would be based on the known contaminants expected in the breathing zone of the wearer. In industrial use, change schedules for anticipated exposures can be reasonably determined. Without formulation knowledge, pesticide users cannot determine the OSHA-required change schedule. Therefore, conservative chemical cartridge replacement criteria based on manufacturer recommendations should be implemented whenever possible. Pesticide labels most often require the use of organic vapor-

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removing cartridges. When a change schedule cannot be established, respirator manufacturers recommend that organic vapor cartridges/canisters should not be used beyond one day.

Organic vapors trapped by the sorbent in the cartridge or canister may easily desorb overnight, causing users to breathe in desorbed pesticide vapors the next day. The concern is that pesticide handlers will not be aware of respirator manufacturer's recommendation for daily disposal of organic vapor-removing cartridges. It is urged that the Department be more stringent than the EPA in this case, and not revise the existing language at N.J.A.C. 7:30-12.20(f)6v, since the current language would not allow for re-use of organic vapor cartridges.

(3)

RESPONSE: The Department agrees that adopting the EPA rule language as proposed on respirator cartridge replacement would result in a less stringent requirement than in the Department's existing rule. Further, the commenter's concerns about pesticide user's difficulty determining change schedules based on a pesticide's formulation are valid. Inert ingredients in a pesticide are not required to be listed on the pesticide's label; often these inerts are solvents or other hazardous substances that are unknown to pesticide users and their employers. Also, the Department agrees that vapors trapped in a cartridge can desorb in storage and potentially expose the user during the next day's work period.

Based on these concerns, the Department will not adopt the proposed amendment to N.J.A.C. 7:30-12.20(f)6v. The adopted rule, like the existing rule, requires cartridges be replaced "... at the end of each day's work period" in the absence of other instructions or indications of

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service life. In addition, similar concerns about unknown inert ingredients exist for “dust/mist filtering respirators” (now properly termed “filtering facepiece” respirators), at N.J.A.C. 7:30-12.20(f)5iv, and, thus, the Department will not adopt the proposed language on change schedules, but will retain the existing language that requires replacement of the filters “at the end of each day’s work period” in the absence of other instructions or indications of service life.

Administrative Penalties

16. COMMENT: The proposed penalty matrix and the structure of the fines begin at a thousand dollars. Growers could be looking at significant fines for what may not be a significant violation. This is excessive considering there was not previously a fine schedule for pesticide violations. This goes beyond the EPA fine recommendations and the Department should reconsider these amounts to have a more reasonable starting fine. (1 and 8)

RESPONSE: The adopted penalty schedule strikes an appropriate balance of deterrence without causing undue hardship that would impact the viability of businesses, including small businesses and farms. The \$1,000 base penalty compares with other Department enforcement programs, such as Freshwater Wetlands Protection at N.J.A.C. 7:7A (\$1,000 base penalty) and Solid Waste at N.J.A.C. 7:26 (\$3,000 base penalty). The Department retains its enforcement discretion and its ability to settle violations for less than the amount in the penalty schedule.

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Certification Examination Fees

17. COMMENT: The imposition of fees for pesticide applicator examinations is opposed, and would hit the State's farmers at a time of increasing labor and energy costs, and a steep downturn in farm income, not only in New Jersey, but nationwide. To ensure that the goals are met of all of the State's farmers having the latest training and information regarding the use of pesticides on their farms, the Department should strike the provisions for examination fees. (4)

18. COMMENT: The Rutgers Office of Continuing Professional Education (OCPE) charges \$115.00 for an exam, which is exorbitant, as is the proposed \$100.00 fee for a Department-administered exam. This fee will impact the commercial industry due to the number of employees that have to be certified and the fact that one employee may have to take multiple tests (CORE and various categories). (8)

19. COMMENT: A third-party should be allowed to administer exams, but the proposed fee structure is of concern. (1)

20. COMMENT: It is perplexing that the notice of proposal states that the fee the OCPE of Rutgers will be charging has not been fully determined. It was previously mentioned that they are trying to keep the test fee under \$115.00. This fee is higher than all the surrounding states. This is totally counterproductive and will open a floodgate to unlicensed and poorly trained people who will avoid licensing. Many companies will stop licensing employees due to the cost (\$300.00 to \$400.00 per person, plus if they fail the exams, an additional \$300.00 to \$400.00).

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Others will limit the number of category tests they take, limiting their ability to perform certain work. Pesticide applicators work in industries of high turnover and such a dramatic increase in testing fees will be prohibitive to them, probably more so in the landscape industry. The role of testing is to encourage well-trained knowledgeable applicators who protect property and health. This huge increase in test fees will not only discourage companies from licensing their technicians, but will negate the ongoing continuing education requirement. (2)

RESPONSE TO COMMENTS 17, 18, 19, AND 20: Stakeholders, in meetings with the Department, expressed general support for the concept of a third-party vendor charging a fee for exam applicants in exchange for greater availability of exams in more locations throughout the State. Whether the exam is given by the Department or a third-party, the fee is reflective of the costs to administer the exam. See the discussion of fees in the Economic Impact, 51 N.J.R. at 669. The adopted Department-administered exam fee, and the anticipated Rutgers exam fee, are within the range of the exam fees charged in surrounding states. New York charges \$100.00 for each core and category exam given for commercial and private pesticide applicators; Connecticut charges a \$200.00 flat rate each time an exam (or exams) are taken for commercial and private pesticide applicators; and Pennsylvania does not charge any fee for private applicator exams, but charges commercial applicators \$50.00 for a CORE exam and \$10.00 for each category exam.

New Jersey has a relatively high rate of failure for its pesticide certification exams, with many commercial category failure rates approaching or exceeding 50 percent. The Department

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has observed that many exam-takers are not prepared for the exams they are taking and believes that in addition to the benefit of greater exam availability, the fee charged by Rutgers OCPE will provide incentive for exam-takers to better prepare.

Department records show that in 2018, 249 private applicator (farm pesticide applicator) exams were given. Private applicator exam-takers comprise approximately 15 percent of the approximately 1,700 private applicators in the State. The Department believes the exam fee is not a large burden to the farming community overall. Unlike commercial applicators that must pass at least two exams (the basic CORE exam plus one or more category exams), private applicators must pass only one combined exam to qualify for licensure.

For many licensed applicators, the examination fee is a one-time cost. The rules give both the private and commercial applicators the option of taking continuing education classes as a means of maintaining a license without the need for an exam, or multiple exams, every five years.

Some individuals who apply pesticides commercially can avoid the examination fee entirely. The rules provide licensed responsible pesticide applicators the option to have employees licensed as commercial "operators," which requires only training by a responsible licensed applicator employed by the business (who is jointly responsible for their pesticide use), and an annual fee of \$30.00. This is an option to reduce costs and is often a good choice for employees that do not fare well taking exams or are in seasonal jobs. Operators can be trained and licensed to perform work in most categories (except some termite work and aerial

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applications). A well-trained commercial operator can be a competent user of pesticides, negating the need for commercial applicator licensing in many circumstances. The Department recognizes, however, that many companies prefer employees to become licensed applicators (who are responsible for their own pesticide applications) rather than operators, since any licensed responsible pesticide applicator that signs an operator's license application is jointly responsible for the operator's pesticide violations.

For a prospective commercial applicator taking the exams to start a business rather than to be an employee of an existing business, the Department believes the fee is a reasonable part of start-up costs for a new business. The adopted penalty schedule will discourage applicators from choosing to use pesticides commercially without obtaining a license. The penalties for failure to be licensed as a commercial applicator (N.J.A.C. 7:30-6.1(a)) and failure to be licensed as a commercial applicator business (N.J.A.C. 7:30-7.1(a)) are considerable. The penalty total for these violations would begin at \$3,500, with the maximum penalty for egregious cases potentially being \$50,000 per day for these two violations combined.

Beekeeper Notification

21. COMMENT: The proposed amendments to the Pesticide Control Code, N.J.A.C. 7:30, regulating pesticide use do not go far enough in protecting our environment. The Department should adopt stronger criteria to protect bees and pollinators. The loss of bees has a dramatic impact on farming and the environment. Bees are in dire trouble in New Jersey and across the

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country. They are dying off in record numbers and hives are collapsing. Without rules to prohibit pesticide use to better protect the bees, they could go extinct. Without bees, many crops would cease to exist and will make human existence much harder.

The Department should amend the Pesticide Control Code to prioritize the protection of the bee population. Some of the changes should include a minimum 48-hour notice before any spraying occurs. The rule calls for a 24-hour spraying notice, which does not provide beekeepers with enough time to properly protect their hives. It is also recommended that spraying only be done at night, and never when conditions are windy or rainy. (9)

RESPONSE: The adopted amendments to N.J.A.C. 7:30-9.11, requiring notification to beekeepers, are to conform the rule to N.J.S.A. 13:1F-4.1.a, enacted in 2018, requiring that notice be provided to keepers of native bees, as well as keepers of honey bees. Native bees are a significant sector of the pollinator population. See the notice of proposal Summary at 51 N.J.R. at 668. How long in advance the notice must be provided to the beekeepers and specific requirements for pesticide application times are beyond the scope of this rulemaking.

22. COMMENT: There needs to be some discretion to whom the pesticide applicator or grower must provide application notification to within reason. The proposed rule would expand the existing pesticide application notification to include beekeepers with a minimum of one hive, including native bees. Is this compatible with the Department of Agriculture's beekeeping rules? The requirement to notify an owner of a single beehive as far away as three miles seems

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to be excessive. There should be some consideration for beekeepers that are in closer proximity to the pesticide application. (8)

RESPONSE: Since the 1980s, the Department has required pesticide applicators to provide notification of pesticide applications to those beekeepers that have registered with the Department to receive notification. The proximity was first one-half mile, then amended in 1988 to one mile (20 N.J.R. 579(a); 2865(a)). In 2001, the Department expanded the proximity to three miles (33 N.J.R. 474(a); 3956(b)), based on the best available science at the time for honeybee foraging ranges, and after convening stakeholders to discuss this issue. The three-mile notification requirement became a statutory requirement, effective on January 16, 2018. See N.J.S.A. 13:1F-4.1. The Department's rules allowed only keepers of honey bees to register for notification. The Legislature expanded the protection to keepers of native bees. The statute does not provide a threshold number of hives that are subject to notification before the notification is required. If there is a registered beehive or beeyard within three miles of the pesticide application, notice is required.

The Department does not view its beekeeper notification rules as incompatible with the Department of Agriculture's rules regulating beekeepers (N.J.A.C. 2:24, Diseases of Bees and Beekeeping Activities). The Department of Agriculture regulates the beekeeping activities; the Department regulates pesticide applicators whose activities may negatively impact the bees.

Summary of Agency-Initiated Changes

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The Department is correcting a misplaced comma at N.J.A.C. 7:30-11.4(b)7 to ensure proper grammatical flow of the sentence.

In the proposed base penalty table at N.J.A.C. 7:30-11.6, the Department will delete the penalty of \$5,000 listed for N.J.A.C. 7:30-4.5(a) in the “Base Penalty” column and adopt the phrase “Use Matrix” in its place. This will ensure that the penalty for this violation for failure to allow the Department entry for an inspection or to collect records will be consistent with other violations of this type in the Administrative Code. There are 15 instances throughout the Code for violations for failure to allow entry for inspection, or failure to provide records to the Department or medical personnel (for example, at N.J.A.C. 7:30-2.5(a), 3.6(a), 6.7(a), 8.7(a), and 12.11(a)). All refer to the matrix at N.J.A.C. 7:30-11.7 for calculation of the penalty for a violation.

In the proposed base penalty table at violations for N.J.A.C. 7:30-6.8(f), 7.3(f) and 12.9(b), the violations are listed as minor (M) in accordance with the grace period law; however, there are no corresponding grace period days-to-compliance listed for them. The Department corrects this oversight by adopting a one-day grace period in the column titled “Grace Period (days)” for these three citations. This is consistent with other pesticide application information-sharing or posting location requirements throughout the Administrative Code, such as at N.J.A.C. 7:30-9.13(c)1, 9.13(d)4, 9.14(a), and 12.5(a)2.

At N.J.A.C. 7:30-12.1(a)4, the Department is deleting the word “for” as a grammatical redundancy.

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At N.J.A.C. 7:30-12.4(c)6, the Department is replacing “assure” with “ensure,” consistent with grammatical changes in the notice of proposal.

At N.J.A.C. 7:30-12.5(c)4, the Department is deleting the phrase “... each aisle or other walking route that enters the treated area, and ...” as it was inadvertently repeated in the notice of proposal.

The Department is modifying N.J.A.C. 7:30-12.16(d) to delete the reference to paragraph (d)1. Existing N.J.A.C. 7:30-12.16(d)1, which referred to the handler training verification card method of verifying training, was proposed for deletion.

At N.J.A.C. 7:30-12.16(q), the term “Pesticide Control Program” is deleted upon adoption, leaving the preferred term “Department” in its place for consistency throughout the chapter.

At N.J.A.C. 7:30-12.20(d)5, the Department is adding a reference to subparagraph (d)5iii, which was inadvertently left out of the proposed rule text. Paragraph (d)5 was proposed to be amended to account for changes in the Federal rules for personal protective equipment (PPE) exemptions when using pesticides from an enclosed cab. The existing Department rule contains subparagraphs (d)5i through iv that explain the conditions and allowances for PPE in an enclosed cab, and the notice of proposal reduced this to subparagraphs (d)5i, ii, and iii. All three subparagraphs must be referenced in paragraph (d)5 for clarity and accuracy.

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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 that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The adopted rules and amendments related to enforcement and adjudicatory hearings, examinations, and notice to beekeepers are not promulgated in order to comply with Federal requirements. Accordingly, as to these adopted changes, no further analysis is required.

The adopted agricultural worker protection standards at N.J.A.C. 7:30-12 are promulgated in order to maintain compliance with the Federal standards at 40 CFR Part 170. Except as set forth below, the adopted amendments, repeal, and new rules are consistent with Federal requirements.

The Department is adopting the amendment to delete the requirement that a farm employer fax or mail to the Department a worker training roster after each training session. Instead, under the adopted amendment at N.J.A.C. 7:30-12.8, the Department will periodically survey farm owners to obtain a summary of information from the rosters. This includes not only information on the training of workers, but also the native languages of the workers. The periodic survey is not in the Federal rules. However, both the Federal rules and the Department rules adopted herein focus on proper health and safety training for workers. The training for workers is focused on pesticide exposure prevention since the tasks they perform are often in fields that have been treated with pesticides; thus, the worker may spend months or years of

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daily exposure to pesticide residue. The Department has an interest in knowing the total population of workers in New Jersey together with the languages they speak, in order that the Department may tailor training strategies for the greatest worker benefit. Although the adopted requirement will result in less frequent reporting than the existing rule, the Department will obtain a more accurate assessment of the trained worker community in New Jersey.

The Department's adopted rules at N.J.A.C. 7:30-12.12(c) are more stringent than the Federal rules as to exemptions for agricultural establishments owned by one or more members of the same immediate family. Unlike the Federal rules, the adopted rules do not exempt family members who are minors under 18 years of age, because New Jersey child labor laws preclude the exemption.

The last area in which the Department's adopted rules are more stringent than the Federal rules is record retention. At adopted N.J.A.C. 7:30-12.6, 12.8, 12.14, 12.16, and 12.20, the Department requires that records be maintained for three years. This is consistent with the Department's current retention requirement for farm pesticide application records and a farm owners' list of handlers employed at the farm, but is more stringent than the two years that the Federal rules require. Also, the Department recognizes that pesticide effects or illnesses that a handler or worker may suffer are not always manifested immediately or soon after exposure. Retaining pesticide use, safety information, or respirator-related records for three years rather

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than two, increases the Department's ability to effectively investigate a potential latent pesticide-related health effect.

Full text of the adopted new rules and amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

7:30-11.4 Adjudicatory hearing

(a) (No change from proposal.)

(b) The person requesting a hearing shall include with the completed Adjudicatory Hearing Request Checklist the following information:

1.-6. (No change from proposal.)

7. Documents or information supporting the request for a hearing, and specific reference to, or copies of other written documents relied on*, * to*[,]* support the request;

8.-9. (No change from proposal.)

(c)-(f) (No change from proposal.)

7:30-11.6 Civil administrative penalty amount: base penalty

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(a) When the Department assesses a civil administrative penalty for a violation of this chapter, the Department shall use the penalty schedule in the table at (a)5 below, except for circumstances listed at N.J.A.C. 7:30-11.7, and subject to the conditions in (a)1 through 5 below and any other Department statutory or regulatory powers.

1.-5. (No change from proposal.)

Citation (N.J.A.C. 7:30-)	Violation	Base Penalty \$	Type of Violation	Grace Period (days)
4.5(a)	Failure to allow entry for inspection, sampling or collection of records	*[\$5,000]* *Use Matrix*	NM	
...				
6.8(f)	The information given to an agricultural employer is partially deficient	\$1,000	M	*1*
...				

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7.3(f)	The information given to an agricultural employer is partially deficient	\$1,000	M	*1*
...				
12.9(b)	Failure to display the safety information in the proper location	\$1,000	M	*1*

7:30-12.1 General duties, prohibited actions

(a) The agricultural employer or the handler employer, as appropriate, shall:

1.-3. (No change from proposal.)

4. Provide to each person, including any labor contractor, who supervises any worker or handler sufficient information and direction to ensure that the worker or handler can comply with the provisions of this subchapter and receives the protection required by this subchapter.

The information shall include the tasks for which the supervisor is responsible ***[for]*** under this subchapter.

(b)-(d) (No change from proposal.)

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7:30-12.4 Worker entry restrictions

(a)-(b) (No change from proposal.)

(c) Exception for short-term activities. A worker may enter a treated area during a restricted-entry interval for short-term activities if the agricultural employer ensures that the following requirements are met:

1.-5. (No change from proposal.)

6. When PPE is required by the labeling of any pesticide for early entry, the agricultural employer shall **[assure]** ***ensure*** that no worker is allowed or directed to perform early-entry activity without implementing, when appropriate, measures to prevent heat related illness;

7.-8. (No change.)

(d)-(e) (No change from proposal.)

7:30-12.5 Notice of applications to workers

(a)-(b) (No change from proposal.)

(c) The agricultural employer shall post warning signs in accordance with the following criteria:

1.-3. (No change from proposal.)

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4. When standard signs are posted in an area of enclosed space production and the entire structure or space is subject to the restricted-entry interval specified on the pesticide labeling and the post-application entry restrictions specified in N.J.A.C. 7:30-12.4, the signs shall be posted so they are visible from all reasonably expected points of worker entry to the structure or space. When the standard signs are posted in a treated area of an enclosed space production and the treated area comprises only a portion of the structure or space, the signs shall be posted so they are visible from all reasonably expected points of worker entry to the treated area, including *[each aisle or other walking route that enters the treated area, and]* each aisle or other walking route that enters the treated area. When there are no usual points of worker entry to the treated area, signs shall be posted in the corners of the treated area or in any other location affording maximum visibility.

5.-9. (No change from proposal.)

(d) (No change from proposal.)

7:30-12.16 Pesticide safety training for handlers

(a)-(c) (No change from proposal.)

(d) *[Except as provided in (d)1 below, if]* ***If*** the handler employer ensures that a handler possesses a copy of a roster indicating that the handler has been trained within the previous 12 months, then the requirements of (a) above will have been met.

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(e)-(p) (No change from proposal.)

(q) The roster of all handlers trained shall be sent to the Department*[, Pesticide Control Program]* by the trainer or agricultural employer after each training session within 30 days.

This requirement includes employee orientation training.

7:30-12.20 Handler personal protective equipment

(a)-(c) (No change from proposal.)

(d) The following are exceptions to personal protective equipment specified on the pesticide labeling:

1.-4. (No change from proposal.)

5. If handling tasks are performed from inside a vehicle's enclosed cab, exceptions to PPE specified on the product labeling for that handling activity are permitted as provided in (d)5i*, *
*[and]*ii *, **and iii*** below.

i. (No change from proposal.)

ii. If the pesticide labeling requires applicators to wear a ***particulate*** filtering face-piece respirator (NIOSH approval number prefix TC-84A) or ***a respirator with*** a dust/mist ***[filtering respirator]* **(particulate) filter as the only respiratory protection*****, then that respirator need not be worn inside the enclosed cab if the enclosed cab has a properly

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functioning air ventilation system that is used and maintained in accordance with the manufacturer's written operating instructions.

iii. (No change from proposal.)

6.-7. (No change from proposal.)

(e) (No change from proposal.)

(f) The handler employer shall ensure that all PPE is cleaned according to the manufacturer's instructions or pesticide labeling instructions before each day of reuse. In the absence of any such instructions, it shall be washed thoroughly in detergent and hot water.

1.-4. (No change from proposal.)

5. The handler employer shall ensure that when dust/mist ***(particulate)*** filtering ***facepiece*** respirators ***or a respirator with a dust/mist (particulate) filter*** are used, the filters shall be replaced when one of the following conditions is met:

i.-iii. (No change from proposal.)

iv. In the absence of any other instructions or indications of service life, at the end of ***[eight hours of cumulative use]* *each day's work period***.

6. The handler employer shall ensure that when gas or vapor-removing respirators are used, the gas or vapor-removing canisters or cartridges shall be replaced before further respirator use when one of the following conditions is met:

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i.-iv. (No change from proposal.)

v. In the absence of any other instructions or indications of service life, at the end of
[eight hours of cumulative use] ***each day's work period***.

7.-9. (No change from proposal.)

(g) (No change from proposal.)