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ENVIRONMENTAL PROTECTION

COMPLIANCE AND ENFORCEMENT

PESTICIDE CONTROL PROGRAM

Pesticide Control Code

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

Authorized By: Lisa P. Jackson, Commissioner, Department of
Environmental Protection

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

Calendar Reference: See summary below for explanation of the exception to the
calendar requirement.

DEP Docket Number: 23-07-10/546

Proposal Number: PRN 2007

A **public hearing** concerning this proposal will be held on January 9, 2008, at:

Submit written comments by February 3, 2008 to:

Oneida Cuevas, Esq.

Attn: DEP Docket Number: 23-07-10/546

Office of Legal Affairs

Department of Environmental Protection

P.O. Box 402

Trenton, NJ 08625-0402

Written comments may also be submitted at the public hearings. It is requested, but not required, that anyone submitting oral testimony at the public hearings provide a copy of any prepared text to the stenographer at the hearing. The Department of Environmental Protection (Department) requests, but does not require, that comments be submitted on disk or CD as well as on paper. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The proposed readoption with amendments can be viewed or downloaded from the Department's website at <http://www.state.nj.us/dep>.

The agency proposal follows:

Summary

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As the Department has provided a 60-day comment period for this notice, this proposal is exempted from the rulemaking calendar requirement under N.J.A.C. 1:30-3.3(a)5.

In accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Pesticide Control Code rules, N.J.A.C. 7:30, were scheduled to expire on October 25, 2007. Pursuant to N.J.S.A. 52:14B-5.1c, this notice of proposal extends that expiration date to April 22, 2008. The Department has evaluated these rules, and has determined that they are necessary, reasonable, and proper for the purpose for which they were originally promulgated, and is proposing to readopt N.J.A.C. 7:30 with amendments, as discussed below.

The Pesticide Control Code rules were originally adopted on January 18, 1974 and were 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). Enforcement of pesticide laws was largely turned over to New Jersey under an agreement, over a period of years (1975-1980). Since 1980, most pesticide regulatory tasks are handled by the Department's inspectors. The Department is required to enforce the requirements of FIFRA at a minimum, and may regulate the sale or use of pesticides as long as it does not permit any sale or use prohibited by FIFRA. In particular, State restricted pesticides (in addition to those restricted by Federal regulation), the commercial and private applicator's licensing requirements, the termiticide use restrictions, and notification requirements are examples of more stringent regulation than that required by the EPA. (See the Federal Standards Analysis for a more detailed discussion of rules proposed for re-adoption that are more stringent than the Federal requirements).

In accordance with the 30-day review mandated by the Pesticide Control Act, N.J.S.A. 13:1F-8, the Pesticide Control Council (Council) was consulted about the proposed amendments to the Code at the Council's April 21, 2006 meeting. Their comments were reviewed and acted upon as necessary. The Council recommends that the proposal proceed through the formal process.

Below is a summary of the 13 subchapters in the Pesticide Control Code, followed by a summary of amendments proposed in each subchapter.

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

This subchapter contains the scope of the Code and all definitions used in the chapter.

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

This subchapter requires all pesticide products held, used, distributed, sold or offered for sale in the State to be registered with the Pesticide Control Program (Program). This requirement is in addition to registration with the EPA. This subchapter enables the Program to better control and monitor the pesticides currently being manufactured, distributed and used in New Jersey. Copies of product labels are submitted to the Department in the registration process and are often used to aid in inspections and investigations. In addition, this subchapter contains requirements for emergency exemption registrations, experimental uses and general requirements. It also identifies prohibited pesticides and lists the pesticides currently classified as restricted use in New Jersey. This list contains pesticides which are currently classified as general use by the EPA, but are restricted in

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New Jersey. These pesticides, which have greater potential for causing harm than the general use pesticides, can only be purchased or used by certified and registered pesticide applicators, or used by a person under their direct supervision.

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

This subchapter requires the certification and licensing of persons who sell restricted use pesticides. It ensures that the sale of restricted use pesticides is made only to certified applicators and sold only by trained and certified dealers.

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

This subchapter requires businesses that sell restricted use pesticides to license each outlet with the Program, and to have a responsible dealer employed at each outlet. It requires recordkeeping and also requires the sale of restricted use pesticides only to registered pesticide applicators.

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

This subchapter requires the licensing of persons who apply pesticides under the supervision of a certified, licensed commercial pesticide applicator. It requires that these pesticide operators receive both classroom and on-the-job training that will enable them to apply pesticides safely and properly.

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

This subchapter requires the certification and licensing of persons who use or supervise the use of pesticides in a way which does not meet the definition of a private pesticide applicator. It requires that applicators take both general and specialized examinations in order to become certified, in addition to classroom and on-the-job training. These examinations are more detailed and specialized than those given for private applicators. This ensures that only properly trained and certified personnel apply pesticides commercially.

N.J.A.C. 7:30-7 Pesticide Applicator Business

This subchapter requires that pesticide applicator businesses license each location and name under which they operate. It also requires that these businesses employ licensed applicators who are certified in each category in which the business conducts applications. Proper recordkeeping, pesticide storage, insurance and service vehicle requirements are mandated.

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

This subchapter requires the certification and licensing of persons who use or supervise the use of pesticides for the purpose of producing any agricultural commodity. A certification exam is

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required. Recordkeeping, service vehicle and storage requirements are mandated. Requiring that private pesticide applicators receive training in such areas as pesticide handling, safety, regulations, labeling information, harvest intervals and other related topics, ensures that pesticides are applied to agricultural commodities safely and properly.

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

This subchapter establishes requirements for aquatic and mosquito control permits, community or area wide applications, pesticide storage, container labeling, pesticide disposal, application and safety equipment, notification and reporting of pesticide spills.

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

This subchapter regulates pesticide use and application, pesticide contamination clean-up and other related topics. It also regulates aerial and termite control applications.

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

This subchapter assigns compliance grace periods and designates in table form all violations of the Pesticide Control Code as “minor” or “non-minor” pursuant to the Grace Period Law, N.J.S.A. 13:1D-12S et seq.

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

This subchapter contains training, notification, and posting requirements for agricultural workers and agricultural pesticide handlers. It was originally promulgated in 1995 in response to the Federal Worker Protection regulations, 40 C.F.R. Parts 156 and 170.

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

This subchapter establishes the requirements for Integrated Pest Management (IPM) in schools in accordance with the School Integrated Pest Management Act, N.J.S.A. 13:1F-19. IPM is a way to manage pest control through practical and preventive methods that eliminate or reduce damage caused by pests with a goal of reducing the reliance on pesticide use. These restrictions help limit the exposure of school children to pesticides.

Subchapter 1. Scope and Definitions

At N.J.A.C. 7:30-1.2, the Department is proposing an amendment to the definition of “Aquatic pesticide” by broadening the list of pesticides that do not fall under the category of “aquatic pesticide”. The two additional exemptions the Department is proposing to add to the list are: 1) 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; and 2) Pesticides labeled as mosquito larvicides whose only active

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ingredients (such as monomolecular surface films) act by physical action and not chemical toxicity. The definition of “Restricted entry interval” is proposed for amendment to include the acronym “REI,” which is also used in these rules, and also to clarify that the period of restrictive entry begins at the end of the pesticide application. The definition of “Termiticide bait” is proposed for amendment to clarify that pheromones or moisture sources are included as attractive substances in such bait, and that gel formulations with an attractive substance are included in this definition. The definition of the term “Under direct supervision” is proposed for amendment to include a cross-reference to the definition for “available if and when needed” to clarify what is meant by the term and how the two terms relate to each other.

The Department is proposing three new definitions. A definition for “Diluent” is being proposed to clarify that it can be a solid or liquid substance used to dilute a pesticide formulation. A definition for “recipe” is being proposed to clarify that it is the total amount of pesticide concentrate and the total amount of diluent mixed together, when required by the label of the pesticide product. The Department is proposing to add a new definition for the term “Underground facility” for the purpose of clarifying that a pesticide applicator must notify the One-Call Damage Prevention System prior to engaging in an excavation activity which might affect an “underground facility”. The Department is defining the term as defined in the Board of Public Utilities, Protection of Underground Facilities: One-Call Damage Prevention System rules, N.J.A.C. 14:2-2.1.

Subchapter 2. Pesticide Product Registration, General Requirements, Prohibited and Restricted Use Pesticides

N.J.A.C. 7:30-2.1(h) is proposed for amendment to increase the product registration fee from \$250.00 to \$300.00. The last year that product registration fees were increased was in 1997. This increase is expected to generate approximately \$600,000 in additional revenue to support the salary and operating needs of the Program and will affect all applicants seeking to register a pesticide for use in New Jersey.

The calculations below represent the costs to run the Program during State Fiscal Year (FY) 2006 (July 1, 2005 to June 30, 2006). The calculations include salary and operating costs for the thirty-four (34) full time equivalent employees (FTE’s) who perform the license, permit, laboratory, research, enforcement and managerial functions of the Program. Four additional FTE’s that make up the balance of the Program are funded by Federal grants and do not need to be included in this analysis, since the proposed fee increase is to generate State funds to support State-funded FTE’s. The calculations below also reflect “fringe” and “indirect” costs associated with State government employees. The indirect costs include indirect management and administrative salary and non-salary costs, building rent and lease construction, and the Department’s share of the “Statewide Cost Allocation Plan” prepared by the New Jersey Department of Treasury. The “fringe” costs include employee benefits, such as health care. In FY 2006, the cost to support the Program’s staff was approximately \$3.7 million for salary, fringe and indirect costs, and \$210,000 in operating expenses (e.g. printing, telephone, and mailings). A detailed breakdown of the Program’s costs for FY 2006 is provided below.

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**COST ANALYSIS OF THE PESTICIDE CONTROL PROGRAM
STATE FISCAL YEAR 2006
JULY 1, 2005 TO JUNE 30, 2006**

Personnel Costs for 34 FTE

Total Salary: \$2,210,177 + **Fringe & indirect:** \$1,492,836 = **Total:** \$3,703,013

Operating Costs

Telephone: \$27,323.25
Postage: \$18,000.00
OIRM: \$23,682.72 (Office of Information Resources Management, the Department's centralized computer, technology, and web site maintenance division)
OPRA: \$16,158.00 (Open Public Records Act)
Training: \$5,870.00
Legislation &
Department Library: \$7,107.00
Clothing Allowance: \$625.00
Assistant
Commissioner Salary: \$20,638.00
Attorney General fee: \$7,000.00
CMP: \$44,922.90 (Central Motor Pool: maintenance, and fuel for vehicles)
Other: \$38,673.13 (inspector field equipment, laboratory costs, paper, and envelopes)

Total Operating: \$210,000.00

TOTAL PROGRAM EXPENDITURES, FY 2006: \$3,703,013 + \$210,000 = \$3,913,013

TOTAL FEES

Fees collected currently to support program expenditures come from the following sources:

Pesticide product registration (\$250)
Pesticide dealer, individual license (\$75)
Pesticide dealer business license (\$150)
Pesticide operator license (\$30)
Commercial pesticide applicator, individual license (\$75)
Pesticide applicator exam fee (\$10)
Pesticide applicator business license (\$150)
Aquatic pesticide permits (\$75).

TOTAL FEES COLLECTED FROM ALL SOURCES, FY 2006: \$4,365,845

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FEES \$4,365,845
Minus EXPENDITURES - \$3,913,013
\$ 452,832 (This amount represents the fee monies retained in the State General Fund based on existing appropriation act language).

The calculations below represent the projected budget needs of the Program for FY 2011, which coincides with the expiration of the current contract with represented employees of the Department. Included in this calculation are negotiated contractual salary increases (cost of living adjustments, or "COLA"), annual merit increments for eligible employees according to the State Salary Compensation Plan, as well as projections for reasonable operating cost increases, as summarized below. Several operating costs not reflected in the 2006 budget are being added here. Laboratory operating costs to cover maintenance on analytical equipment, laboratory supplies such as gases, solvents, standards, and gas chromatograph columns are included. Other laboratory costs, such as upgrades or occasional replacement of high-cost analytical equipment are estimated here as well. Since the Department's Laboratory was dissolved in 1996 (leaving only the pesticide laboratory portion to do the specialty analysis required for a pesticide enforcement program), there has been no program operating budget increase to fund the laboratory. As a result, Federal EPA grants and cooperative projects with Rutgers University have supplied supplemental operating monies to keep the Program, including the laboratory, operating at a bare minimum level. These grants are no longer available, and a stable funding source is critical to the survival of the Program and the pesticide laboratory. Also included are stable funding sources for delegation of pesticide inspections to county agencies (CEHA); costs for temporary clerical help for the high volume of administrative tasks associated with the pesticide licensing program; data management needs for carrying out the statutory requirements of the School Integrated Pest Management (IPM) Act and other program functions; and the costs of replacing two state vehicles each year for field inspectors. As in the summary of FY 2006, salaries supported by Federal grant monies are not included in this projection for FY 2011.

**COST ANALYSIS OF THE PESTICIDE CONTROL PROGRAM
STATE FISCAL YEAR 2011
JULY 1, 2010 TO JUNE 30, 2011**

Salary, Fringe, and Indirect Costs for FY 2011

Current Salary Costs FY 2008	\$2,549,642
Contractual Salary Adjustment through FY 2011	\$ 254,964
State Salary Compensation Plan (merit increments for eligible employees)	\$ 33,570 (annual average through FY 2011)
TOTAL SALARY:	\$2,838,176
Salary plus State Fringe Costs	\$2,838,176 + 33.15% = \$3,779,031
Salary plus State Fringe and Indirect Costs	\$3,779,031 + 21.24% = \$4,581,697

Operating Costs for FY 2011

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Operating from 2006, plus 2.5%	
Increase per year for inflation	\$231,000
Laboratory	\$115,000
County Environmental Health Act	\$ 40,000
Temporary Clerical Services	\$ 20,000
IPM in Schools Data Management and other program-wide data needs	\$ 30,000
State Vehicle Replacement (2 per year)	\$ 40,000
TOTAL ESTIMATED OPERATING COSTS	\$476,000

TOTAL ESTIMATED PROGRAM COSTS, FY 2011	$\$4,581,697 + \$476,000$
	= \$5,057,697
ESTIMATED REVENUE FROM ALL FEES IN 2011, WITHOUT INCREASE	= \$4,400,000
DEFICIT WITHOUT FEE INCREASE	= \$ 657,697

The Department is proposing new N.J.A.C. 7:30-2.1(o) to incorporate by reference the Federal Container and Containment regulations for the registrants. The Department is required to enforce these Federal regulations and the State regulations cannot be less restrictive than the Federal regulations. The Federal regulations are located at 40 C.F.R. Parts 9, 156 and 165. The Federal regulations mandate requirements for the design of pesticide containers that will promote the safe storage and disposal of pesticides. The Federal regulations also mandate requirements prescribing procedures and standards for the removal of pesticides from containers prior to disposal. In addition, the Federal regulations mandate requirements for refillable containers, repackaging, labeling and containment for spill prevention.

N.J.A.C. 7:30-2.5(b) is proposed for amendment to update the reference to the appropriate "Notice of Attempt to Contact" form.

The Department is proposing new N.J.A.C. 7:30-2.7(k) to incorporate by reference the Federal Container and Containment regulations (40 C.F.R. Parts 9, 156 and 165) as part of the general requirements for pesticide products. The Department is required to enforce these Federal regulations and the State cannot be less restrictive than the Federal regulations.

The Department is proposing new N.J.A.C. 7:30- 2.7(l) to include that each employer will be held responsible for the actions of his or her employee and the employer and employee will be held to joint and several liability.

Subchapter 3. Pesticide Dealers

The \$10.00 examination fee at N.J.A.C. 7:30-3.2(b) is proposed to be deleted. The purpose of this proposed amendment is to shift this fee from pesticide dealers, commercial applicators and private applicators who must take the examinations (in order to become licensed) to the commercial applicator community by proposing a \$5 increase in the commercial applicator

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license fee (see proposed amendment below at N.J.A.C. 7:30-6.4(a)). This will be a “revenue neutral” shift that will not result in additional revenue for the Department, but it will eliminate the administrative burden of handling thousands of \$10 checks received when each person signs up to take the examination. The Department is proposing new N.J.A.C. 7:30-3.2(b) to establish a \$50 fee for those people who sign up for an examination and fail to show up for the examination without just cause. This \$50 fee is not a planned revenue source; rather it is designed to create sufficient incentive for license-holders to follow through with examination obligations and reduce the administrative burden of repeat examination sign-ups.

N.J.A.C. 7:30-3.2(c) is proposed for amendment by deleting the language that references the examination fee which is proposed for deletion at N.J.A.C. 7:30-3.2(b).

N.J.A.C. 7:30-3.3(b) and 3.3(c) are proposed for amendments to change the license year expiration date from November 30 to October 31 of each calendar year to be consistent with the other license expiration dates.

N.J.A.C. 7:30-3.3(e) is proposed for amendment to delete the requirement that a pesticide dealer inform the Department that the dealer is no longer offering restricted use pesticides for sale, since the Department believes it is not critical to be informed when the dealer stops selling restricted use pesticides. Also, at N.J.A.C. 7:30-3.3(e)1, the Department is proposing to delete the requirement that the dealer notify the Department of the dealer’s retirement and the requirement that upon retiring the dealer return the license to the Department.

N.J.A.C. 7:30-3.6(b) is proposed for amendment to update the reference to the appropriate “Notice of Attempt to Contact” form.

N.J.A.C. 7:30-3.7(a)2 is proposed for amendment to be consistent with the wording in N.J.A.C. 7:30-4.2(a)2.

N.J.A.C. 7:30-3.9(a) is proposed for amendment to clarify that no pesticide dealer may sell pesticides to an unlicensed person who the dealer knows must be certified and licensed under the rules, unless the dealer gives or has previously given the buyer the Program’s information sheet on certification and licensing. N.J.A.C. 7:30-3.9(a)1 is proposed for amendment to clarify the recordkeeping that must be performed for the sale of pesticides to an unlicensed person. N.J.A.C. 7:30-3.9(c) is proposed for amendment to clarify that the record of sale must be kept for a minimum of three years and must be immediately provided to the Department upon request.

The Department is proposing new N.J.A.C. 7:30-3.13 to incorporate by reference the Federal Container and Containment regulations, 40 C.F.R. Parts 9, 156 and 165. The Department is required to enforce these Federal regulations. The State regulations cannot be less stringent than the Federal regulations.

Subchapter 4. Pesticide Dealer Businesses

N.J.A.C. 7:30-4.1 (d) and 4.1(e) are proposed for amendment to change the license period end date from November 30 to October 31 of each calendar year to be consistent with the other license expiration dates.

N.J.A.C. 7:30-4.4(a) is proposed for amendment to clarify that no pesticide dealer may sell pesticides to an unlicensed person who the dealer knows must be certified and licensed under the rules, unless the dealer gives or has previously given the buyer the Program's information sheet on certification and licensing. N.J.A.C. 7:30-4.4(a)1 and 4.4(c) are proposed for amendment to clarify the recordkeeping that must be performed for the sale of pesticides to an unlicensed person.

N.J.A.C. 7:30-4.5(b) is proposed for amendment to update the reference to the "Notice of Attempt to Contact" form.

The Department is proposing new N.J.A.C. 7:30-4.8 to incorporate by reference the Federal "Container and Containment" regulations, 40 C.F.R. Parts 9, 156 and 165. The Department is required to enforce these Federal regulations. The State regulations cannot be less stringent than the Federal regulations.

Subchapter 5. Commercial Pesticide Operators

N.J.A.C. 7:30-5.1(a)2 is proposed for amendment to clarify that operators must be at least 18 years old, since this is already a requirement at N.J.A.C. 7:30-3.3(f), 6.4(h) and 8.3(e). A proposed amendment also corrects a grammatical error.

N.J.A.C. 7:30-5.3(f) is proposed for amendment to remove the requirement to notify the Department if the commercial pesticide operator is no longer engaged in the application of pesticides. The Department considers it unnecessary to track persons who no longer intend to use pesticides, since the Department believes it is not critical to be informed when the operator stops applying pesticides.

N.J.A.C. 7:30-5.6(b) is proposed for amendment to update the reference to the "Notice of Attempt to Contact" form.

Subchapter 6. Commercial Pesticide Applicators

N.J.A.C. 7:30-6.2(c) is proposed for amendment to delete the \$10.00 examination fee, but will subject absentee examination applicants to a \$50.00 fee instead. See discussion at N.J.A.C. 7:30-3.2(b) above.

N.J.A.C. 7:30-6.2(d), 6.2(e) and 6.2(g) are proposed for amendment by deleting language that references the exam fee, which is proposed for deletion at N.J.A.C. 7:30-6.2(c).

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N.J.A.C. 7:30-6.3(a)6 is proposed for amendment to clarify the description of certification subcategory 6B, Right of Way Pest Control. This clarification shows that subcategory 6B, Right of Way Pest Control allows pesticide applications for control of insect pests of turf and ornamental plants.

N.J.A.C. 7:30-6.4(a) is proposed for amendment to reflect a \$5.00 increase in the license fee for commercial pesticide applicators. See discussion at N.J.A.C. 7:30-3.2(b) above.

N.J.A.C. 7:30-6.4(e) is proposed for amendment to delete the requirement to notify the Department, in writing and within 30 days, if the commercial applicator is no longer engaged in the application of pesticides. The Program no longer needs this requirement to track applicators with the intention of no longer applying pesticides, since the Department believes it is not critical to be informed when the pesticide applicator stops applying pesticides.

N.J.A.C. 7:30-6.5(a) is proposed for amendment to change the annual license fee from \$75.00 to \$80.00. See discussion at N.J.A.C. 7:30-3.2(b) above.

N.J.A.C. 7:30-6.6(a) is proposed for amendment to delete the cross-reference to N.J.A.C. 7:30-6.2, since it is no longer applicable.

N.J.A.C. 7:30-6.7(b) is proposed for amendment to update the reference to the “Notice of Attempt to Contact” form.

N.J.A.C. 7:30-6.8(a) is proposed for amendment to clarify that the recordkeeping requirements for pesticide applications do not apply to recordkeeping for aquatic pesticide applications which have separate requirements.

N.J.A.C. 7:30-6.8(a)1i is proposed for amendment to note that the hour completed signals the beginning of the REI.

N.J.A.C. 7:30-6.8(a)2i is proposed for amendment to change the word agricultural crop to agricultural commodity.

N.J.A.C. 7:30-6.8(a)3 is proposed for amendment to clarify that the active ingredients and EPA registration numbers of each pesticide used during the application must be recorded unless the applicator uses a symbol which designates the pesticide on a separate list with all the information required.

N.J.A.C. 7:30-6.8(a)4 is proposed for amendment to require the recipe used to mix the pesticide as required by the label. The recipe shall consist of the total amount of pesticide concentrate and the total amount of diluent.

N.J.A.C. 7:30-6.8(a)5 is proposed for amendment to require the total amount of pesticide

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mixture.

N.J.A.C. 7:30-6.8(a)5i is proposed for amendment to require the size of the area treated, but only when a rate per given area is require by the label.

N.J.A.C. 7:30-6.8(a)8iv is proposed for amendment by adding the requirement that records be maintained when the applicator applies pesticides in “porch over basement” situations.

The Department is proposing new N.J.A.C. 7:30-6.11(c) to require the responsible applicator to inform the Department of changes in operator licenses if this information is not supplied to the Department by the commercial pesticide operator himself. This proposed amendment will make the subsection consistent with the requirements at N.J.A.C. 7:30-5.3(g).

N.J.A.C. 7:30-6.12 is proposed for amendment to clarify that only a person who is currently licensed may be assigned to make a pesticide application.

The Department is proposing new N.J.A.C. 7:30-6.14 to incorporate by reference the Federal “Container and Containment regulations, 40 C.F.R. Parts 9, 156 and 165. The Department is required to enforce these Federal regulations. The State regulations cannot be less stringent than the Federal regulations.

Subchapter 7. Pesticide Applicator Business

N.J.A.C. 7:30-7.1(f) is proposed for amendment to delete the requirement to notify the Department, in writing and within 30 days, if the business is no longer engaged in the application of pesticides. The Program no longer needs this requirement to track businesses who are no longer applying pesticides, since the Department believes it is not critical to be informed when the pesticide applicator business stops applying pesticides.

N.J.A.C. 7:30-7.2(b) is proposed for amendment to update the reference to the “Notice of Attempt to Contact” form.

N.J.A.C. 7:30-7.3(a) is proposed for amendment to clarify that the recordkeeping requirements for pesticide applications do not apply to recordkeeping for aquatic pesticide applications which have separate requirements. In addition, some recordkeeping requirements are proposed for amendment as detailed below.

N.J.A.C. 7:30-7.3(a)1i is proposed for amendment to note that the hour completed signals the beginning of the REI.

N.J.A.C. 7:30-7.3(a)2i is proposed for amendment to change the word agricultural crop to agricultural commodity.

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N.J.A.C. 7:30-7.3(a)3 is proposed for amendment to clarify that the active ingredients and EPA registration numbers of each pesticide used must appear on the records of application unless the applicator uses a symbol which designates the pesticide on a separate list with all the information required.

N.J.A.C. 7:30-7.3(a)4 is proposed for amendment to require the recipe used to mix the pesticide as required by the label. The recipe shall consist of the total amount of pesticide concentrate and the total amount of diluent.

N.J.A.C. 7:30-7.3(a)5 is proposed for amendment to require the total amount of pesticide mixture.

N.J.A.C. 7:30-7.3(a)5i is proposed for amendment to require the size of the area treated, but only when a rate per given area is required by the label.

N.J.A.C. 7:30-7.3(a)8iv is proposed for amendment by adding the requirement that records be maintained when the applicator business applies pesticides in “porch over basement” situations.

N.J.A.C. 7:30-7.3(b) is proposed for amendment to add the requirement that written records be kept of the information required under N.J.A.C. 7:30-7.3(b)1-3.

N.J.A.C. 7:30-7.5 is proposed for amendment to clarify that only a person who is currently licensed may be assigned to make a pesticide application.

The Department is proposing new N.J.A.C. 7:30-7.9 to incorporate by reference the Federal “Container and Containment regulations, 40 C.F.R. Parts 9, 156 and 165. The Department is required to enforce these Federal regulations. The State regulations cannot be less stringent than the Federal regulations.

Subchapter 8. Private Pesticide Applicators

N.J.A.C. 7:30-8.2(b) is proposed for amendment to delete the \$10.00 examination fee, but will subject absentee examination applicants to a \$50.00 fee instead. See discussion at N.J.A.C. 7:30-3.2(b) above.

N.J.A.C. 7:30-8.7(b) is proposed for amendment to update the reference to the appropriate “Notice of Attempt to Contact” form.

N.J.A.C. 7:30-8.8(a) is proposed for amendment to clarify that the recordkeeping requirements for pesticide applications do not apply to recordkeeping for aquatic pesticide applications which have separate requirements. In addition, some recordkeeping requirements are proposed for amendment as detailed below.

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N.J.A.C. 7:30-8.8(a)1i is proposed for amendment to note that the hour completed signals the beginning of the REI.

N.J.A.C. 7:30-8.8(a)2i is proposed for amendment to change the word agricultural crop to agricultural commodity.

N.J.A.C. 7:30-8.8(a)3 is proposed for amendment to clarify that the active ingredients and EPA registration numbers of each pesticide used must appear on the records of application unless the applicator uses a symbol which designates the pesticide on a separate list with all the information required.

N.J.A.C. 7:30-8.8(a)4 is proposed for amendment to require the recipe used to mix the pesticide as required by the label. The recipe shall consist of the total amount of pesticide concentrate and the total amount of diluent.

N.J.A.C. 7:30-8.8(a)5 is proposed for amendment to require the total amount of pesticide mixture.

The Department is proposing new N.J.A.C. 7:30-8.13 to include that each employer will be held responsible for the actions of his or her employee and the employer and employee will be held to joint and several liability.

The Department is proposing new N.J.A.C. 7:30-8.14 to incorporate by reference the Federal "Container and Containment regulations, 40 C.F.R. Parts 9, 156 and 165. The Department is required to enforce these Federal regulations. The State regulations cannot be less stringent than the Federal regulations.

Subchapter 9. Pesticide Exposure Management

N.J.A.C. 7:30-9.1 is proposed for deletion and reserved because reference to the New Jersey Agricultural Experiment Station Publication No.-40001-01-99 is outdated and no longer used.

N.J.A.C. 7:30-9.2(a) is proposed for amendment to list the term "pupal" as a form of mosquito and by adding a reference to correct the nomenclature for mosquitoes.

N.J.A.C. 7:30-9.2(i) is proposed for amendment by adding the correct telephone number for the Program.

N.J.A.C. 7:30-9.3(b)1, 2 and 3 are proposed for amendment to continue to show that these exemptions continue to apply only in cases where the aquatic site is not a source of potable water.

N.J.A.C. 7:30-9.3(b)4 is proposed for amendment to clarify that the use of a minimum

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risk pesticide is exempted from the aquatic pesticide permit process, even in cases where the aquatic site is a source of potable water. This rule currently requires a permit for the use of minimum risk pesticides in sources of potable water. This is not the Program's intent, since users of minimum risk pesticides are exempt from applicator licensing requirements.

N.J.A.C. 7:30-9.3(c)1 is proposed for amendment to require all information requested on the form to be accurate at the time of submission.

The Department is proposing new N.J.A.C. 7:30-9.3(j) by adding a requirement that recordkeeping for each aquatic application permitted by an aquatic pesticide permit must conform to the requirements listed on the "Record of Actual Treatment Sodium Hypochlorite Solution" (Form BPO-06).

The Department is proposing new N.J.A.C. 7:30-9.3(k) to require that an aquatic pesticide permit will only be valid for the time period specified at the time of the permit approval.

N.J.A.C. 7:30-9.5(b) is proposed for amendment to require pesticide applicators and dealers who store pesticides to maintain a list of pesticides stored and require the submission of that list to the local fire company on an annual basis, along with a written description or diagram depicting the exact location of the area where the pesticide is stored.

N.J.A.C. 7:30-9.5(f)6 is proposed for amendment to clarify that the fire extinguisher shall be properly functioning and accessible to the pesticide applicator.

The Department is proposing new N.J.A.C. 7:30-9.6(d) to incorporate by reference the Federal "Container and Containment" regulations, 40 C.F.R. Parts 9, 156 and 165. The Department is required to enforce these Federal regulations. New Jersey cannot be less restrictive than Federal regulations.

N.J.A.C. 7:30-9.10(b)3ii is proposed for amendment to require a more detailed description of a community or area wide pesticide application by including the street name, or names of streets at the nearest intersection, municipality and county, on the notification information.

N.J.A.C. 7:30-9.12(b)1 and(b)3, 9.12(c)4 and (c)6, 9.12(d)1, 9.13(b)2 and (b)4, 9.13(c)2 and (c)4 and 9.13(e)7 are proposed for amendment to include electronic mail as an acceptable method of distribution for the Consumer Information Notice.

N.J.A.C. 7:30-9.12(b)1vi, 9.12(c)4vi, 9.12(d)1vi, 9.13(b)2vi, 9.13(c)2vi, 9.13(d)2iii and 9.13(e)7vi are proposed for amendment by correcting grammatical errors and by removing references to "health referrals". The purpose of removing references to health referrals is to clarify that the Department is not the primary source for health referrals. All health referrals are made to the National Pesticide Telecommunications Network and the New Jersey Poison

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Information and Education System telephone numbers as specified in the Code.

The Department is proposing new N.J.A.C. 7:30-9.12(c)7 for the purpose of clarifying that common areas (such as, hallways, storage areas and laundry rooms) of structures with multiple residential units are considered commercial buildings which require structural notification pursuant to N.J.A.C. 7:30-9.12(d).

N.J.A.C. 7:30-9.12(b)3, 9.12(c)6, 9.13(b)4 and 9.13(c)4 is proposed for amendment to include electronic mail as a method of obtaining a waiver from the contracting party. This proposed amendment to the rules will broaden the method by which the applicator may obtain a waiver from the contracting party.

N.J.A.C. 7:30-9.13(b)1i, 9.13(c)1i, and 9.13(e)2 are proposed for amendment by adding the requirement that notification signs, posted on the treated property at the start of pesticide application for the control of insect pests of turf or ornamental plants, are to be white in color, bear the words "Pesticide Treated Area" and the information on the sign must be printed in a dark color. This requirement does not apply to pesticide applications on golf courses under N.J.A.C. 7:30-9.13(d)1, however, this requirement will apply to those residential properties described under N.J.A.C. 7:30-9.13(d)3 and (d)4.

N.J.A.C. 7:30-9.13(c)1vii to clarify the pesticide applicator may delegate to the contracting party, in writing, the removal of the signs.

Subchapter 10. Pesticide Use

N.J.A.C. 7:30-10.2(e) is proposed for amendment to correct a minor grammatical error and to emphasize that a pesticide applicator must take precautionary measures to protect an individual or the environment consequently exposed by the use of the pesticides.

N.J.A.C. 7:30-10.2(n) is proposed for amendment to clarify that if no numerical re-entry time is prescribed on the pesticide label, then the re-entry time is seven hours.

N.J.A.C. 7:30-10.3(b)1i and (b)1ii are proposed for amendment to require a readable label to be placed on the exterior of a rodent bait box.

N.J.A.C. 7:30-10.3(c)1 is proposed for amendment to update the reference to the EPA PR-Notice which describes the standards for tamper-resistant bait boxes.

N.J.A.C. 7:30-10.4(a)1 is proposed for amendment to clarify that an individual monitoring or placing the pesticide active ingredient in the termite baiting stations can be a trained and licensed commercial pesticide operator, as long as he or she working under the direct supervision of a responsible commercial pesticide applicator certified in the termite subcategory. This activity does not pose a risk of misapplication or subsequent exposure to customers.

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The Department is proposing new N.J.A.C. 7:30-10.4(a)2 to include a reference to the Board of Public Utilities' Protection of Underground Facilities: One-Call Damage Prevention System rules at N.J.A.C. 14:2-4.1 to require that prior to engaging in an excavation activity, which includes, but is not limited to a subsurface termiticide application, the commercial pesticide applicator must notify the One-Call Damage Prevention System. According to the New Jersey Board of Public Utilities, excavation damage to underground facilities remains the leading cause of gas pipeline accidents nationally, and can also cause disruptions to vital public services, and can result in fatalities, serious injuries, financial losses, and affect the environment. The inclusion of this reference may assist in preventing such damage.

The Department is proposing new N.J.A.C. 7:30-10.4(j)3i to emphasize that when making an application of a termiticide to an inaccessible space, drilling through the exterior foundation walls or ceiling is acceptable.

N.J.A.C. 7:30-10.4(n) is proposed for amendment to allow termite treatments five years after a previous treatment. The purpose of this proposed amendment is to allow re-treatments when the initial treatment is no longer effective recognizing that termiticides on the market today are generally effective for about five years. This contrasts with termiticides of the past (such as chlordane) that could be effective for termite control for 25 years or more.

N.J.A.C. 7:30-10.6(a) is proposed for amendment to update the reference to the Federal Agricultural Aircraft Operations requirements, 14 C.F.R. Part 137.

The Department is proposing new N.J.A.C. 7:30-10.6(a)1 to require an aerial applicator to provide proof of current licensing as an agricultural aircraft operator in order to obtain a New Jersey commercial pesticide applicator license.

N.J.A.C. 7:30-10.6(n) is proposed for amendment by deleting the requirement that aerial pesticide application for non-agricultural purposes must be performed on a target site less than three contiguous acres in size because it is a duplicative requirement of N.J.A.C. 7:30-10.6(o).

N.J.A.C. 7:30-10.8(a) is proposed for amendment to clarify that sample collection in the case of a suspected misapplication or spill of a pesticide, is done to define or help define a violation of the Act or regulations.

N.J.A.C. 7:30-10.8(c) through (f) are amended to increase the sampling fees (these fees are charged only in cases where a violation has occurred). Sampling fees have not been increased for approximately 15 years, and this fee increase will reflect actual current operating costs for sample analysis. During that time, costs associated with running a laboratory, such as maintenance on analytical equipment, laboratory supplies such as gases, solvents, standards, and gas chromatograph columns have increased. In addition, other laboratory costs, such as upgrades or occasional replacement of high-cost analytical equipment, have increased as well. Also, the Department is proposing amendments at N.J.A.C. 7:30-10.8(d). This amendment includes the addition of the sampling parameters commonly acquired, such as vegetation, filter paper and

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commodities (fruits and vegetables). This proposed amendment also includes the deletion of a method of air analysis (puf) at N.J.A.C. 7:30-10.8(d)2 since it is no longer in use and the recodification of 10.8(d)3-(d)5 as 10.8(d)2-(d)4.

N.J.A.C. 7:30-10.8(e) is proposed for amendment to specify the cost for a Phenoxy Acid herbicide scan.

N.J.A.C. 7:30-10.9(a)3 is proposed for amendment to further define what the Department means by “site” in collecting its pesticide survey information.

Subchapter 11. Pesticide Grace Period Regulations

N.J.A.C. 7:30-11.1(d), (f) and (g) are proposed for amendment to exclude all violations of subchapter 13 (School Integrated Pest Management) from penalties. N.J.S.A. 13-1F-32(b) exempts schools from a penalty for violations of the School Integrated Pest Management Act.

The table of violations at N.J.A.C. 7:30-11.2(a) is proposed for amendment by adding violations as minor or non-minor that correspond to the proposed amendments at N.J.A.C. 7:30-2.1(o), 2.7(k), 3.13, 4.8, 6.11(c), 6.14, 7.9, 8.14, 9.3(j), and 9.6(d), as discussed above.

The Department applied the criteria required by the Grace Period Law to each new pesticide regulation noted above in order to determine its classification as either “minor” or “non-minor”. To designate a violation as minor, the following criteria must be satisfied: the violation is not willful or criminal in nature; it poses minimal risk to health and the environment; it does not substantially undermine the goals of the Department; it exists for less than 12 months, is not a repeat violation within the last 12 months or does not indicate a pattern of illegal conduct; and it is capable of being corrected within the grace period prescribed by the Department.

N.J.A.C. 7:30-2.1(o), 2.7(k), 3.13, 4.8, 6.14, 7.9, 8.14, and 9.6(d) incorporate by reference the Federal Container and Containment regulations, 40 C.F.R. Parts 9, 156 and 165. See discussion above. These regulations affect manufacturers of agricultural pesticides, and businesses that sell or use agricultural pesticides, or refill containers with agricultural pesticides. The purpose of the Federal regulations is to: minimize human exposure during handling of pesticide containers; facilitate safe disposal and recycling; and protect the environment from releases of pesticides at bulk storage facilities. This purpose will be met through new container design, new label directions for rinsing and disposal, and requirements for containing spills or releases at certain facilities. The Department concludes that based on the stated purpose above, violations of the Federal Container and Containment regulations would be more than a minimal risk to human health and the environment, and thus a “non-minor” designation is appropriate.

N.J.A.C. 7:30-6.11(c) qualifies for designation as a “minor” violation, assuming that it exists for less than 12 months and is not a repeat violation within the last 12 months. This requirement gives added assurance that, if a licensed commercial operator has not informed the

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Department of changes in the information that appears on the license application, the responsible commercial applicator will submit this information. Updating license information is administratively important, but not a risk to human health or the environment. Thus, the Department concludes that offering a grace period to submit updated licensing information is appropriate.

N.J.A.C. 7:30-9.3(j) requires certain information to be recorded for each application of an aquatic pesticide. Pesticide application recordkeeping serves many important functions. It allows the Department to monitor pesticide use through routine inspections and respond to complaints to determine if these chemicals are being used in violation of Federal and State law or in a manner that could put the public and/or the environment at risk. Pesticide application recordkeeping also allows medical personnel access to necessary information, if there is an exposure or health effect as a result of pesticide use, and it allows the Department to perform periodic surveys to determine trends in pesticide use and thus guide decision making and goal setting. Assuming for the sake of this analysis that a pesticide recordkeeping violation is not willful or criminal in nature, or a repeat violation, the Department determined that such a recordkeeping violation still fails to satisfy two (and possibly three) of the criteria required for a “minor” designation. Specifically, the health and safety goals of the Department in regulating pesticide applications are substantially undermined when application records are not kept (the goals being preventing adverse effects and managing the risk associated with the use of pesticides). The risk to health and the environment could be more than minimal, if a pesticide is being used improperly (the information in application records is an important part in determining misuse). It is also likely that many recordkeeping violations would not satisfy the requirement that they be correctable within the grace period timeframe (or correctable at all), since recreating application information, such as the exact amount used of a particular pesticide, the dosage of the mixture, and exact site to which the chemical was applied, would be difficult and would not likely produce accurate results.

The table of violations at N.J.A.C. 7:30-11.2(a) is proposed for amendment to reflect proposed changes in the language of the underlying subsection at N.J.A.C. 7:30-3.9(a), 4.4(a), 9.5(b), 9.13(b)1 and 9.13(c)1. See detailed discussion above regarding the proposed amendments to N.J.A.C. 7:30-3.9(a), 4.4(a), 9.5(b), 9.13(b)1 and 9.13(c)1.. The violation text in the table is merely a description of a violation and is not intended for use as a guide for regulatory compliance. For the complete text of a rule, refer to the appropriate section and paragraph above.

N.J.A.C. 7:30-11.2(a) proposed for amendment to reflect actual deletions of the text in the rules at N.J.A.C. 7:30-9.1(a) and 10.6(n).

Subchapter 13. Integrated Pest Management in Schools

N.J.A.C. 7:30-13.2(a) is proposed for amendment to require that the site specific IPM Plan must be maintained at the school for which it was developed.

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N.J.A.C. 7:30-13.3(c)1 is proposed for amendment to require that each school must submit to the Department the full name, title, birth date, work telephone number and work e-mail address of the IPM Coordinator.

N.J.A.C. 7:30-13.3(c)2 is proposed for amendment to require that each school submit to the Department the name, title, mailing address and telephone number of the head of the local school board or the lead administrator of a private or charter school.

N.J.A.C. 7:30-13.3(c)3 is proposed for amendment to require that the school must submit to the Department the county, district and school code of each school for which the IPM Coordinator is responsible.

N.J.A.C. 7:30-13.3(c)4 and (c)5 are proposed for deletion because the Department is proposing to incorporate these requirement at N.J.A.C. 7:30-13.3(c)1.

The Department proposes recodifying N.J.A.C. 7:30-13.3(c)6 as N.J.A.C. 7:30-13.3(c)4 as described above.

The Department is proposing new N.J.A.C. 7:30-13.3(c)5 to require that any changes in the designation of the IPM Coordinator must be submitted to the Department within 30 days of the change.

The Department is proposing new N.J.A.C. 7:30-13.4(a)5 to require that all required records must be provided immediately to medical personnel in emergency situations.

N.J.A.C. 7:30-13.8(a) is proposed for amendment to clarify that if a numerical re-entry time is not prescribed on the label, then the re-entry time is seven hours. This proposed amendment is made in order to use the actual text from the IPM in Schools Act (N.J.S.A 13:1F-19).

Social Impact

The proposed readoption with amendments is designed to continue the positive social impact of the current rules. Public health has been protected from exposure to toxic substances, including carcinogens. Prior to Federal and State regulation, numerous instances of inadvertent harm due to misapplication of pesticides were documented. This led to the passage of FIFRA and the Pesticide Control Act of 1971, N.J.S.A. 13:1F-1 et seq. Changes to the Code in 1983, 1985, 1988, 1992, 1995, 2001 and 2004 have further defined the correct use of termiticides and other pesticides, refined public notification, added requirements for the protection of agricultural workers and promulgated School IPM requirements.

The entire population of New Jersey has benefited from the regulation of pesticides in New Jersey. Drift from aerial applications, contamination of homes with termiticides, and improper disposal of pesticides have all been reduced in New Jersey. The most hazardous pesticides

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(restricted use) are allowed for use only by licensed applicators, thus avoiding mishaps by untrained homeowners or other consumers. In 2007, approximately 8,511 certified commercial applicators, 1,757 certified private applicators and 198 certified dealers have successfully completed the State testing program and become licensed. Approximately 2,996 operators have been trained by their responsible applicators and licensed in New Jersey. In addition, the Program has registered 12,462 pesticide products by 1,506 registrants, licensed 121 dealer businesses and 2,675 commercial pesticide applicator businesses.

Since the adoption of the worker protection provisions of subchapter 12 in 1995, 2,266 pesticide handlers have been trained, 30,855 farm workers have been trained and 1,193 trainers have been recognized by the Department to perform worker training. During that time 2,096 farms have been inspected for compliance with the worker protection regulations.

The Department's outreach program, press releases, and the New Jersey Bell yellow page notification, which alerts consumers to the regulatory requirements, have helped raise public awareness of pesticide safety and the Code in general. In addition, the Pesticide Control Program created a web page that makes a great deal of pesticide information available on the Internet including regulations, policy guidance and sample forms.

The interested public's reaction to the Code has generally been favorable. Chemical manufacturers, applicators, environmentalists and consumers have differed on specific substances and provisions in the existing rules, but there has been general acknowledgement that there is a need for pesticide regulation. The existence of the Code has successfully focused the attention of all parties on the importance of using scientific data as the basis for pesticide regulation. The Department anticipates that the Code will continue to be the focus of public debate over what constitutes an acceptable health risk concerning pesticides.

Existing rules that exempt certain pesticide active ingredients of "minimum" risk promoted the increased use of these "low risk" products and resulted in less exposure to people and the environment of other pesticides posing a higher risk. The fact that there is no State registration for these deregulated products, no licensing required for their use, and a variety of other regulatory exemptions, should promote increased use of these alternatives.

Consumers are often confused by promotional literature and advertising that make unwarranted or misleading safety claims for pesticide products. Phrases such as "safe," "non-toxic" and "harmless to children and pets" are often used in advertising for chemical pesticides that are not without risk to both the applicator and the customer. The existing requirement prohibiting this false or misleading advertising benefits consumers and the public in general by not misleading them, and fosters an atmosphere of educated concern regarding the use of pesticides in general.

Upgrading the licensing requirements for commercial applicators and requiring all farmers who use pesticides to become licensed has enhanced consumer safety by providing a highly qualified pesticide applicator workforce. Whether it is pest control for the household,

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lawn care, or food supply, these requirements reduce risk to the public.

The rule prohibiting aerial application of “broad spectrum” pesticides that have a high degree of risk for non-target insects (or people) within the spray area has had a positive impact for unsuspecting people who may be in the area during the spraying. Despite community or area wide notification requirements, there is always a chance someone will be in the area of a planned spraying, such as for gypsy moth control. This rule mandates that pesticide products specific to the pest being controlled (such as the biological pesticide “Bt”) that have far less risk associated with their use, be used in place of a broad spectrum pesticide. This is of great benefit not only to people in the area, but also beneficial insects and other organisms as well.

The Code requires that schools institute pest management programs using Integrated Pest Management to minimize exposure to schoolchildren. Improvements were made to the Code requiring notification for community or area wide spraying to include school notification. Pesticide applicators who are spraying near schools with high-pressure equipment prone to drift are required to notify the school prior to spraying. These requirements have enhanced protections for children from the risk of pesticide exposure (children are among the most sensitive of the population to the effects of pesticide exposure). Regarding community or area wide spraying of pesticides, mosquito-spraying activities associated with the West Nile Virus prevention effort highlighted areas for improvements to the requirements. Improved newspaper notice, and posting information daily on Internet web pages and automated telephone hotlines where technologically feasible, has enhanced the public’s ability to get information about spraying. This helps the public take the necessary steps to avoid exposure to spraying in their town or neighborhood.

The termiticide application rules allow innovative treatment methods and products to be used in New Jersey. These innovative treatment methods, such as the use of termiticide “foams”, excavating around well lines to detect and avoid risks to well water, and new products such as baits, are designed to reduce risk while performing effective termite control. New methods often reduce the use of conventional liquid chemical “barrier” applications that carry a higher degree of environmental and human risk.

Most of the proposed amendments are clarifications of already existing requirements, which will make the current requirements easier to understand. This in itself should have a beneficial social impact.

Economic Impact

The rules proposed for readoption will continue the beneficial economic impact that the current rules have had for citizens of the State. The Code has a positive economic impact by reducing the costs attributed to health problems posed by improper pesticide use. There has also been a decrease in the number of contamination cases requiring expensive clean-up. Proper use of pesticides enables farmers to protect their crops from damage due to agricultural pests, while the public is protected from harmful residues in food. The residents of the State and their property are also protected from harmful, destructive, and disease carrying pests through the proper use of

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pesticides. The proposed amendments to the Code are not expected to have an economic impact. The proposed fee increases are necessary to the operation of the Program and the impact is expected to be small. An analysis of the current and future costs associated with running the Program is included in the summary of amendments at N.J.A.C. 7:30-2.1(h). The proposed increases in laboratory analytical fees represent the actual costs of those analyses and will only be assessed to the person or company responsible for a spill, misuse or violation.

In fiscal year 2006, pursuant to 7 U.S.C. § 136(g), approximately \$438,000 and \$20,000 in annual grants were received by the Department from the Federal Environmental Protection Agency (EPA) and the Federal Department of Agriculture (USDA) respectively, for conducting inspections for the administration of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), and USDA recordkeeping requirements on farms. Under the Performance Partnership Grant (EPA Enforcement, Certification, Worker Protection, Endangered Species, Groundwater Protection) and the Department's authority under N.J.S.A. 13:1F-9, the following activities have been conducted pursuant to the current rules:

1. Cooperative pesticide enforcement agreements;
2. Use/misuse inspections, both agricultural and non-agricultural;
3. Monitoring of New Jersey's State certification program;
4. Pesticide producing establishment inspections;
5. Export inspections;
6. Experimental use permits;
7. Incident investigations;
8. Market place inspections;
9. Sample collection;
10. Sample analysis;
11. Worker protection;
12. Endangered species protection;
13. Groundwater protection; and
14. Certification and licensing activities.

In addition, the Program receives an annual \$20,000 grant from the State Mosquito Control Commission to conduct mosquito pesticide drift research.

The total expenses for the Program are appropriated through regular State appropriations. Fees are collected for the State through the Code by registration fees for pesticide products, applicator and applicator business license fees, dealer and dealer business license fees, operator license fees, permit fees and sample analysis fees for samples taken in violative cases. Registration and licensing fees for all the regulated persons and businesses were increased in 1990, and are scheduled to be increased again in this 2007 proposal for pesticide products, sample analysis and commercial applicator licenses. Due to the large number of products and licensees, the Department has been able to keep the registration fees moderate. Therefore, the economic impact of these fees is minimal to the individual registrant. The product registration cost is reasonable and, overall, amounts to only a few cents or less per unit sold. The product registration fee is increased in this

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proposal because salary, cost of living and indirect costs are projected to rise over the next five years to a point where Program costs are no longer supported by the fees charged (See the financial analysis performed in the Summary at N.J.A.C. 7:30-2.1(h)). The sample analysis fees are based on the costs actually incurred by the Department for the sample analysis.

The Department mandates commercial applicator businesses to carry insurance for chemical liability as well as damage to persons or property. The costs vary, depending on the volume of business conducted, but are reasonable in that they are not hindering existing businesses or preventing new businesses from entering the marketplace.

Businesses have not incurred excessive time and effort (and resulting costs) as a result of the operator and applicator training requirements and these have not caused hardship. This requirement formalized what most responsible businesses did already, namely prepare new employees for work in what can be a very technical industry.

There is a positive economic impact for manufacturers and applicators of “deregulated” minimum risk pesticides, since there are no registration fees for manufacturers of these products (saving \$300.00 per product), and no license, testing, or chemical liability insurance fees for applicators solely using these products (saving \$225.00 in annual license fees, plus additional insurance premiums).

The rule requiring all private applicators (farmers) who use pesticides to become licensed did have an economic impact (though minimal) on the estimated several hundred farmers this rule affected. Study materials and examinations are available at a nominal cost (\$10.00 to \$15.00 for study manuals). There are no annual license fees for private applicators as there are with commercial applicators and operators. Obtaining a license brings with it other regulatory obligations that will require time, and occasionally money, spent to ensure compliance. Attending continuing education seminars to acquire necessary credits to maintain the license (a maximum estimated cost of \$30.00 per year since many seminars are free of charge) will result in a nominal cost to these license holders.

Improving public notification of pesticide spraying only had a minimal impact on the regulated community. Applicators who use high-pressure pesticide application equipment near schools must take the time to contact school officials and arrange for notification prior to any applications taking place. This scheme may include copying or faxing information to the school at a nominal cost. Notification for community spraying such as mosquito control did affect costs slightly. Instead of the former requirement for advertisements in the legal sections of two area newspapers, the current regulation requires a legal ad in one paper, and a “prominently displayed” ad in another newspaper to notify community residents. The prominently displayed ad increases advertising costs slightly depending on where in the newspaper the ad is placed. In addition, for community spraying, applicators were required to send packets of information on planned spraying to township officials so they will be knowledgeable about these activities. Much of the information in the packet was developed by the Department, so costs for complying with this consists of copying and mailing costs to send this information annually to towns

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targeted for pesticide application.

The cost for farmers to comply with the requirement that would require them to notify neighbors of pesticide applications is minimal. This rule only affects those farmers cited for misuse of pesticides, who are then required to post fields near neighboring residents when pesticide applications are taking place. This rule does not affect the vast majority of farmers since documented misuse of pesticides on farms is not a common occurrence (an average of one or two violative incidents per year are received). The costs of one or two strategically placed signs when an application is made within 250 feet of a neighboring property do not cause economic hardship. Additionally, a farmer who does not misuse pesticides for a five-year period after being initially cited would no longer have to post for the benefit of neighbors.

The requirement prohibiting aerial application of broad spectrum chemical pesticides has a positive economic effect while minimizing costs associated with using alternative products. Broad spectrum chemicals by nature harm or destroy beneficial insects and other organisms in the targeted spray area. For example, chemicals such as carbaryl used for gypsy moth larvae control may also have an adverse impact on both domestic honeybee populations and wild pollinators such as bumblebees foraging in the sprayed areas. Protecting these pollinators that play a vital role in pollinating certain crops and in honey production is seen as a significant positive economic impact. The switch to less harmful pesticides specific to the pest being controlled (such as the biological pesticide "Bt") may add some cost to the customer, because use of Bt may require a second application.

The grace period rules have not had a significant economic impact on the regulated community. These designations of violations as non-minor or minor (with compliance grace periods for minor violations) were merely a formalization of longstanding enforcement policy. When violations of a significant nature are cited, a compliance grace period is not granted, and immediate corrective action must be undertaken. Violations of a less serious nature that do not compromise the Department's mandate to protect the environment or public health are allowed a period of time to correct during which no penalty would be imposed. The real economic impact to a violator of the rules (which grace period rules have not altered) appears, for example, when a business must suspend its pesticide spraying for lack of a license. Thus, revenues will be lost during the time the pesticide applications have been suspended or subcontracted to a licensed company.

The termiticide application rules are designed to allow innovative treatment methods allowed by EPA, to be used in New Jersey. Many of the methods, such as using chemical "foams", or protecting drinking water well lines before treatment, will allow less costly treatment and provide precautions against costly well cleanups, a significant economic benefit.

New laboratory fees are proposed, but the proposed laboratory fee increases reflect the actual cost to analyze samples by the Pesticide laboratory. These laboratory analysis fees are only charged in cases of pesticide misuse. An analysis of the laboratory fees has indicated an approximate average increase of 250% in costs for the analysis of these samples over the last 15

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years. Those fees include sample preparation, laboratory equipment (glassware, utensils and instrumentation), instrumentation maintenance contracts and laboratory staff salaries. Since these sample fees are assessed only against the party responsible for misapplication or contaminating a non-target site, they should not have a significant impact on the regulated community. Overall, the costs of compliance with the proposed amendment will not be significant or excessive.

Environmental Impact

The rules proposed for readoption will continue their positive environmental impacts by regulating pesticides in the State's lands, waters and homes.

In the past, the Code has significantly reduced the threat to public health and the environment from the misapplication and misuse of these potentially dangerous substances. For example, after implementation of the Code on termiticide use, effective November 4, 1985, there was a significant reduction in the number of homes contaminated, and in the number of clean-ups subsequently ordered (1985 - 40 clean-ups, 1986 - 20, 1990 - 6, 1991 - 4, 1993 - 2).

Since implementation of amendments to the Code in 1992 and 1995, pesticide complaints have fallen steadily each year. Since implementation of the global revisions in 2001, pesticide complaints have stabilized at about 250 each year. Both training and licensing under the continuing licensing program have been successful in reducing environmental hazards by making the applicator industry more aware of potential harm to the environment. There has likewise been an increased public awareness of the need to use pesticides more carefully. The Code has reassured the public that pesticide applications will be performed properly and only by trained applicators, and that clean-ups, where necessary, will be conducted promptly and effectively.

The Code has resulted in the Department acquiring better knowledge of the applicators that are operating and the pesticides being used. Applicators appear to be far better organized as to procedures, records, and storage, based on inspections conducted by the Department since 1976. Statistical information on where pesticides are applied and how much, is collected from the applicators through pesticide use-surveys. Environmental monitoring also takes place. For example, fruits and vegetables from New Jersey farms and farm markets are monitored for pesticide residues. Also, the Department has conducted monitoring projects to determine the levels of pesticides in indoor air and pesticide use on golf courses. A number of monitoring wells in agricultural areas are routinely sampled to determine if they are contaminated by pesticides. In addition, this has been supplemented by obtaining water samples from wells used by farm workers and the farmers themselves.

The previous amendments to the Code have had a positive environmental impact by requiring further training for commercial applicators and operators, licensing for all private pesticide applicators, school and agricultural notification, prohibiting the application of "broad spectrum" pesticides by air, and prohibiting false and misleading advertising about pesticides used. The proposed readoption with amendments will continue this positive environmental impact.

NEPPS Statement

The following is a statement regarding the pesticide rule amendments and reoption in light of the Department's Strategic Plan and the National Performance Partnership System (NEPPS).

The 2005-2007 NJDEP Compliance & Enforcement Strategic Plan reflects the Department's vision, mission and five broad goals. The final NEPPS Performance Partnership Agreement (PPA) for 2005-2007 contains 20 activities relating to the Pesticide Control Program.

The National Environmental Performance Partnership System (NEPPS) provides a detailed outline of the Department's goals and includes focused milestones, strategies, activities and indicators for each. The Performance Partnership Agreement that is developed every three years under NEPPS serves two purposes: It is a comprehensive, cross-program planning document, providing more detail than the Strategic Plan, and it guides the relationship between the Department and USEPA Region II in Federally funded or delegated programs.

The following goal defines the Pesticide Control Program's purpose:

1. Protection of the public and the environment from adverse effects associated with the use of pesticides.

Reoption of the Code with amendments will serve the above goal in the following ways:

1. Continuing the protections in place governing pesticide use, sale, production and distribution will reduce pesticide use, prevent pollution, and minimize potential exposure to people and the environment. This is critical for pesticides, which impact all media (water, soil, air, food) and are applied in all areas of the State for various reasons (structural, landscaping, food production, disease vector control, right-of-way safety, disinfection/sterilization and aquatic uses.
2. The proposed rule amendments will clarify existing provisions in the Code and make the rules governing protection of the public and the environment easier to implement.

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. Where citations of the Code are made in this analysis, it will be as they appear in the proposed amended Code.

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 (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 (N.J.S.A. 13:1F-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. 13:1F-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. To this end, the Department's Pesticide Control Program has adopted and is proposing to readopt, with amendments, the Pesticide Control Code (N.J.A.C. 7:30). The rules proposed for readoption 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 proposed amendments are clarifications of 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 a proposed amendment may exceed the Federal requirement, it is discussed below. Those rules that the Department is proposing to readopt are also discussed below:

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

1. FIFRA Section 4(I)5 requires that all pesticide products must be registered annually with the EPA. The proposed readoption 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 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 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:

- 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;
- 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

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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 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;
6. The Department has proposed 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 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.

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.

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 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 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 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 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 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.

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 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

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many health studies conducted on pesticides years ago are 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).

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 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 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 rules proposed for readoption, which in certain respects do exceed comparable Federal standards, are fully justified from a policy, legal and cost-benefit perspective.

The rules proposed for readoption 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 requirements have to do with the population density of New Jersey and the proximity of treated areas to other residents, water bodies, natural

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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

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 the

environment and the applicator. The 2000 Census data shows that while New Jersey is ranked 9th 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 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.

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

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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 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.

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 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.

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

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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.

The primary purposes 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.

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

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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 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

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.

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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:

- 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 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

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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 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

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

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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 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 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.

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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.

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.

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

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and the protection of the environment, the additional recordkeeping requirement is reasonable.

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

The rules proposed for re adoption 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 rules proposed for re adoption 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.

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

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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):

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 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:

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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:

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.

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

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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.

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;
- 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” 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. 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

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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.

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 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

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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 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 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 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. 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
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:

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 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:
 - (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 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 effect 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 proposed readoption of 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 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.

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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

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.

Jobs Impact

The Depart cannot quantify or identify an impact on jobs which has resulted from the current rules and does not expect the proposed readoption with amendments to produce an impact upon jobs in New Jersey. This is consistent with the overall conclusion in the Economic Impact statement that the costs of operating will not hinder the industry. However, some new jobs were created to fill needs in the training sector, as businesses chose to hire a training provider to fulfill operator and applicator training requirements, although there was ample opportunity for businesses to provide the training in-house at a low cost.

Agriculture Industry Impact

The existing rule has promoted the safe use of pesticides in New Jersey's agricultural industry. The proposed readoption will continue a number of beneficial effects. Public health has been protected from potential adverse effects associated with pesticide use, and residues in food. While farmers, environmentalists, and consumers have differed on specific provisions in the rules, all have acknowledged that there is a general need for pesticide regulation. Storage and use regulations have prevented mishaps, and recordkeeping for pesticide applications has allowed the Department to monitor pesticide use through routine inspections, and alert the farmer if he is using a pesticide inconsistent with the label directions or State Code. Existing notification rules require farmers to alert nearby beekeepers when using pesticides toxic to bees. This promotes the protection of valuable bee colonies that provide a vital, irreplaceable service for certain crops needing insect pollination in order to produce a viable crop.

The licensing process for farmers using pesticides, and the continuing education process associated with maintaining the license, reduces the costs attributed to health problems posed by improper pesticide use. Proper use protects valuable crops while avoiding excessive, illegal residues on food. Continuing education requirements enable license holders to learn the most recent developments in safe pesticide application, and educate them about techniques such as IPM which relies on a planned, educated approach to controlling pests rather than merely spraying pesticides on a calendar schedule. This can save time and money for the grower while

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avoiding unnecessary pesticide use.

The Agricultural Worker Protection rules found in N.J.A.C. 7:30-12 are, with a few exceptions, identical to Federal rules published at 40 C.F.R. Part 170. They have helped protect farmers and farm workers from the effects of pesticide exposure since their adoption into the State rules in 1996. Three main concepts in the rule have helped prevent or mitigate pesticide exposure to agricultural employees who mix, handle, or apply pesticides (handlers) and employees who perform tasks related to cultivation or harvesting (workers). The first concept is exposure prevention through the use of safety equipment, restricted entry intervals for treated fields, and posting of notification about treated fields. The second concept is mitigating exposures that do occur through the use of decontamination sites and emergency assistance, when necessary. The third concept is basic safety training for all workers and handlers on the potential hazards of pesticides and how to avoid exposure. These provisions have helped protect the health of a workforce vital to agricultural interests in New Jersey. Without migrant and other farm labor to help farmers grow and harvest their crop, the agricultural industry in New Jersey would suffer catastrophic consequences.

Since worker protection rules are substantially uniform throughout the nation, no state is at an economic disadvantage in comparison with other states by complying with all of the provisions. Farmers who are licensed pesticide applicators need not hire a trainer to train their workers, since they are automatically eligible to train their workers and handlers. Training has often been conducted and coordinated by the Department, alleviating some of this burden for farmers. A convenient multi-copy pesticide recordkeeping form was developed by the Department and distributed free of charge to farmers to help them comply with posting requirements. Safety pamphlets and fact sheets were also developed by the Department and are available to farmers to distribute to their employees in order to comply with rules particular to New Jersey. Costs to comply with these worker protection rules have not been excessive.

Full private applicator licensing has affected only those farmers and nurserymen who were unlicensed and use only general use pesticides. The Department estimated this number to be small in comparison to the number of private applicators licensed to use restricted use pesticides. Also, the Department delayed implementation of this rule for two years after the adoption to allow unlicensed individuals to study for the exam or make other arrangements, such as hiring a licensed applicator. In addition, the Department requires a minimum threshold of \$2,500 in revenue before licensing is required. This was intended to exclude the "backyard gardener" from the licensing requirements.

Agricultural applicators were little affected by new requirements for pesticide applicators to notify schools when pesticide applications are made to abutting properties under certain conditions (high pressure spraying within 250 feet, which is more conducive to off-target drift). This impact only occurred when farms were actually spraying within the specified distance of a school boundary and spraying with equipment prone to drift. The impact of this requirement to farmers is minimal while the positive impact is notification of pesticide applications to schools, allowing precautionary measures to prevent potential exposure to children (a vulnerable segment

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of the population).

Another notification requirement required that farmers who misuse pesticides outdoors must post fields as a way to let neighbors know that a pesticide application is taking place. The positive impact is the notification of neighboring residents of pesticide applications made by agricultural applicators who have violated pesticide use regulations (such as the prohibition of drift onto neighboring properties).

Regulatory Flexibility Analysis

The current rules apply to 2,675 pesticide applicator businesses, an estimated 2,500 farms, 1,757 private pesticide applicators, 8,511 commercial applicators, 2996 operators, 198 pesticide dealers, 121 dealer businesses, and 1,506 manufacturers. Virtually all fall under the definition of a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Exceptions to the above are some of the manufacturers that register their products in New Jersey and some large farm operations.

In order to comply with current rules, the small business will have to comply with recordkeeping, reporting, and other requirements set forth in the Summary above. In doing so, it is unlikely that the small business will need any type of professional services to comply. Additionally, the Department offers pesticide businesses and applicators a compliance assistance course administered by senior inspectors (free of charge) designed to help them fulfill all regulatory obligations. The Department has estimated that there are no initial capital costs to comply, and that the annual costs of compliance are minimal. In developing this Code, the Department has balanced the need to protect the environment against the economic impact of the proposed Code and has determined that exemption from coverage under the Code would endanger public health and the environment through the increased possibility of improper pesticide handling and use. Therefore, no exemption from coverage is provided. While no exception is provided, the highest fee is paid by the pesticide product manufacturers, which are generally larger businesses.

In order to comply with the Code, small businesses have to comply with the training, recordkeeping, notification, reporting, and other requirements, set forth below and also described elsewhere in this document. Professional services are not likely to be needed to comply. Classroom training for pesticide applicators and operators can be provided “in-house” or through associations and trade organizations, as long as Department approved materials and format are used. Acceptable alternatives to true “on-the-job” training are listed in the rule when circumstances do not allow an applicator to receive the conventional training (coursework or “on-line” training.). Responsible companies already provide training during the first week of a new employee’s tenure, so this proposed readoption is not seen as causing any significant increase in the cost of compliance.

Full private applicator licensing should not need professional services to comply. Farmers turning to the services of a professional custom applicator are likely to do so by choice

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rather than need. Annual costs for compliance are minimal since the license is free, and initial study materials and test fees amount to \$15.00. Courses required for continuing education credits for the license are often free of charge, but if paid for, should amount to no more than \$24.00 per year. These costs are tax-deductible.

Prohibiting certain pesticide products for aerial spraying has not resulted in any different approach regarding professional services. Under this provision, the applicator needs to modify his or her selection of pesticides used in order to minimize impact to non-target organisms in the spray area. No significant cost differences were noted by the Department as a result. It is possible that extreme Gypsy Moth infestations in residential areas may cause individual property owners to hire a ground spraying pesticide applicator as a supplement to, or replacement of the State Department of Agriculture spray program that uses only "Bt." The formalization of grace periods for certain violations did not require any regulated entity to need professional services. Companies or individuals in violation are informed at the conclusion of an inspection, or shortly thereafter, what violations were present and the timetable for correction. Professional services hired to correct problems (equipment malfunctions, etc.) would occur with or without the codification of violations as "minor" or "non-minor."

The proposed fee amendments will not result in any initial capital costs, and the annual costs of compliance will be minimal. A modest \$50.00 increase in pesticide product fees has been proposed, as well as a change in fees for commercial applicators that shifts fees from exam-takers to license-holders, to save the undue administrative burden of handling thousands of checks for exam sign-up. Also, the highest fee is paid by the pesticide manufacturers, which are generally larger businesses. In developing these amendments, the Department has balanced the need to protect the environment and human health against the impact of the proposed Code. The Department has determined that exemption from coverage under the Code would endanger public safety, health, and the environment through the increased possibility of improper pesticide distribution, handling, storage, and use. Therefore, no exemption from coverage is provided.

Smart Growth Impact

Executive Order No. 4 (2002) requires state agencies that adopt, amend or repeal any rule adopted pursuant to Section 4(a) of the Administrative Procedures Act, to describe the impact of the proposed rules for readoption with amendment will have on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the rules proposed for readoption with amendments on the State Plan. The rules proposed for readoption with amendments do not involve land use policies or infrastructure development and therefore, do not impact the achievement of smart growth. As to the implementation of the State Plan, the intent of the rules is to reduce the risk to human health and the environment associated with the use of pesticides. Therefore, the rules proposed for readoption with amendments are consistent with the pollution prevention philosophy and environmental protection goals of the State Plan.

Full text of the rules proposed for readoption may be found in the New Jersey

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Administrative Code at N.J.A.C. 7:30.

Full text of the proposed amendments follow (additions indicated in boldface **thus**; deletions indicated in brackets [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 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.-4. (No change.)

5. 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; or

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

...

“Diluent” means any liquid or solid material used to dilute a pesticide formulation for use.

...

“Recipe” means the total amount of pesticide concentrate and the total amount of diluent mixed together, when required by the label of the pesticide product.

...

“Restricted-entry interval” **or “REI”** means the period of time that must elapse after a field is treated with a pesticide, and before any person is permitted to enter to engage in an activity requiring substantial contact with treated surfaces. **The restricted entry interval begins at the time that the pesticide application is completed.**

...

“Termiticide bait” means any termiticide formulated with food or another attractive substance **such as a pheromone or moisture source.** Termiticide baits are normally solid wood, cardboard or paper formulations with little or no hazard of contaminating off target sites. **Gel formulations with an attractive substance are also included in this definition.**

...

“Under direct supervision” means under the instructions and control of another person who is responsible for actions taken and who is available if and when needed (**see definition of “available if and when needed”**) even if not physically present. An employer/employee relationship is required for someone to be under direct supervision.

“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.

...

SUBCHAPTER 2. PESTICIDE PRODUCT REGISTRATION, GENERAL REQUIREMENTS, PROHIBITED AND RESTRICTED USE PESTICIDES

7:30-2.1 Registration

(a)-(g) (No change.)

(h) Before holding, using, distributing, selling, or offering for sale any pesticide in this State, the applicant or registrant shall pay an annual registration fee of \$[250.00] **300.00** to the Department or its authorized representative for each pesticide to be registered. All such registrations shall expire on December 31 of each calendar year.

(i)-(n) (No change.)

(o) No person shall hold, use, distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State or between points within this State through any point outside this State any pesticide or pesticide container, unless he or she complies with the requirements of 40 C.F.R. Parts 9, 156 and 165 (otherwise known as the Federal Container and Containment regulations).

7:30-2.5 Right of entry or collection of samples

(a) (No change.)

(b) Notification pursuant to (a) above may also consist of a "Notice Of Attempt To Contact[/Inspect/Investigate]" [Form DEQ-081] delivered by hand to an employee, an owner, operator or agent in charge, or sent by certified mail, receipt acknowledged.

1. (No change.)

(c)-(d) (No change.)

7:30-2.7 General Requirements

(a)-(j) (No change.)

(k) No person shall hold, use, distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State or between points within this State through any point outside this State any pesticide or pesticide container, unless he or she complies with the requirements of 40 C.F.R. Parts 9, 156 and 165 (otherwise known as the Federal Container and Containment

regulations).

(l) Notwithstanding the responsibility of any other person or the exemption from the provisions of any other section of this subchapter, each employer shall be held responsible for any violation of the act committed by his or her employee in the scope of his or her employment. This responsibility shall be joint and several.

SUBCHAPTER 3. PESTICIDE DEALERS

7:30-3.2 Certification

(a) (No change.)

(b) [An examination fee of \$10.00 may be charged for each examination.] **Any person who is assigned a certification examination date, and fails to be present on that examination date without just cause, shall be subject to a \$50.00 fee.**

(c) Application for examinations shall be made on a form supplied by the Department which shall be filed[, along with the examination fee,] with the Department no later than midnight of the closing date for the examination as determined by the Department. [The examination fee shall not be refunded.]

7:30-3.3 Licensing

(a) (No change.)

(b) The license year shall expire on [November 30] **October 31** of each calendar year.

(c) Applications for new licenses will be accepted from certified pesticide dealers throughout the calendar year, but a full year's license fee will be required. All such licenses will expire on [November 30] **October 31** following the date of application except that the Department may issue a license for an additional year when an application is initially filed during the last three months of the license year.

(d) (No change.)

(e) A pesticide dealer shall notify the Department, in writing and within 30 days, if any information as shown on the license application changes [or the pesticide dealer is no longer offering for distribution or sale, or supervising the distribution or sale of, restricted use pesticides].

[1. If a dealer retires or otherwise voids his or her license as a dealer of restricted use pesticides, the license shall be returned to the Department, Pesticide Control Program.]

(f) (No change.)

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7:30-3.6 Right of entry or collection of samples

(a) (No change.)

(b) Notification pursuant to (a) above may also consist of a "Notice Of Attempt To Contact[/Inspect/Investigate]" [Form DEQ-081] delivered by hand to an employee, an owner, operator or agent in charge, or sent by certified mail, receipt acknowledged.

1. (No change.)

(c)-(d) (No change.)

7:30-3.7 Records

(a) A pesticide dealer shall keep, for each distribution or sale of restricted use pesticides with which he or she is associated, a record containing the following information:

1. (No change.)

2. The brand[/] **or** trade name and the EPA product registration number of each restricted use pesticide distributed or sold;

3.-6. (No change.)

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

7:30-3.9 Sale of general use pesticides

(a) No pesticide dealer shall sell any general use pesticide to [a] **an unlicensed** person who they know must be certified and licensed under the provisions of N.J.A.C. 7:30-6, 7 or 8 unless the dealer [provides] **gives** or has previously **given** [provided] the buyer [with] the Pesticide Program's information sheet on certification and licensing.

1. A record **equivalent to that required under N.J.A.C. 7:30-3.7(a)** shall be kept [for three years of who the information is given to and when] **for each sale referenced in (a) above (except the license number of the certified pesticide applicator and license number of the pesticide applicator business)**.

(b) (No change.)

(c) The record of **sale** [who is given the information sheet and when they receive it from the dealer] shall be **kept for a minimum of three years, and shall be** immediately provided to the Department upon request.

7:30-3.13 Container and Containment Rule

No person shall hold, use, distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State or between points within this State through any point outside this State any pesticide or pesticide container, unless he or she complies with the requirements of 40 C.F.R. Parts 9, 156 and 165 (otherwise known as the Federal Container and Containment regulations).

SUBCHAPTER 4. PESTICIDE DEALER BUSINESS

7:30-4.1 Licensing

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

(d) An annual license fee of \$150.00 shall be paid to the Department at the time of licensing for each separate license. The license period shall end on [November 30] **October 31** of each calendar year.

(e) Applications for new licenses will be accepted from pesticide dealer businesses throughout the calendar year, but a full year's license fee will be required. All such licenses will expire on [November 30] **October 31** following the date of application except that the Department may issue a license for an additional year when an application is initially filed during the last three months of the license year.

(f)-(j) (No change.)

7:30-4.4 Sale of general use pesticides

(a) No pesticide dealer business shall sell any pesticide to [a] **an unlicensed** person who they know should be certified and licensed under the provisions of N.J.A.C. 7:30-6 or 8 unless the dealer business [provides] **gives or has previously given** the buyer [with] the Pesticide Program's information sheet on certification and licensing.

1. A record **equivalent to that required under N.J.A.C. 7:30-4.3(a)** shall be kept [for three years of who the information is given to and when] **for each sale referenced in N.J.A.C. 7:30-4.4(a) above (except the license number of the certified pesticide applicator and license number of the pesticide applicator business)**.

(b) (No change.)

(c) The record of **sale** [who is given the information sheet and when they receive it from the dealer] **shall be kept for a minimum of three years and** shall be immediately provided to the Department upon request.

7:30-4.5 Right of entry or collection of samples

(a) (No change.)

(b) Notification pursuant to (a) above may also consist of a "Notice Of Attempt To Contact[/Inspect/Investigate]" [Form DEQ-081] delivered by hand to an employee, an owner, operator or agent in charge, or sent by certified mail, receipt acknowledged.

1. (No change.)

(c)-(d) (No change.)

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7:30-4.8 **Container and Containment Rule**

No person shall hold, use, distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State or between points within this State through any point outside this State any pesticide or pesticide container, unless he or she complies with the requirements of 40 C.F.R. Parts 9, 156 and 165 (otherwise known as the Federal Container and Containment regulations).

SUBCHAPTER 5. COMMERCIAL PESTICIDE OPERATORS

7:30-5.1 General requirements

(a) No commercial pesticide operator shall engage in, cause, suffer, allow, or permit the use or application of any pesticide without first meeting the training and licensing requirements of this subchapter unless:

1. (No change.)
2. Such person is **at least 18 years of age and** working under the direct supervision of a responsible commercial pesticide applicator who is present at the time and place of application and visual and audio contact sufficient to [insure] **ensure** proper application is maintained.
- i.-ii. (No change.)
- 3.-4. (No change.)

(b)-(e) (No change.)

7:30-5.3 Licensing

(a)-(e) (No change.)

(f) The commercial pesticide operator shall notify the Department, Pesticide Control Program, in writing and within 30 days, of any changes in the information contained on the license application [or if the commercial pesticide operator is no longer engaged in the application of pesticides].

(g)-(i) (No change.)

7:30-5.6 Right of entry or collection of samples

(a) (No change.)

(b) Notification pursuant to (a) above may also consist of a “Notice Of Attempt To Contact[/Inspect/Investigate]” [Form DEQ-081] delivered by hand to an employee, an owner, operator or agent in charge, or sent by certified mail, receipt acknowledged.

1. (No change.)

(c)-(d) (No change.)

SUBCHAPTER 6. COMMERCIAL PESTICIDE APPLICATORS

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7:30-6.1 (No change.)

7:30-6.2 Certification and training

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

(c) [An examination fee of \$10.00 shall be charged for each examination. This shall be paid by check or money order only, payable to “Treasurer-State of New Jersey.”] **Any person who is assigned a certification examination date, and fails to be present on that examination date without just cause, shall be subject to a \$50.00 fee.**

(d) Application for the examinations shall be made on a form supplied by the Department, [which shall be filed,] along with [the examination fee, and] proof of training, [with the Department] no later than midnight of the closing date for the examination as determined by the Department. [The examination fee will not be refunded.]

1. (No change.)

(e) After certification a pesticide applicator who elects to add one or more categories or subcategories to his or her certification shall be required to take only the category examination for such category or subcategory, and shall file a separate application with proof of training appropriate to that category [and pay the examination fee for each exam].

(f) (No change.)

(g) The Pesticide Control Program may waive certification testing or may only require a “waiver” examination (a short examination covering the pesticide regulations) for such categories as 12B-Sterilization, where the applicant already holds the recognized training certificate, membership card or license. To become certified and licensed in New Jersey through the examination waiver process, the following items must be submitted:

1.-2. (No change.)

3. The completed waiver examination answer sheet[; and].

4. The examination fee as required in N.J.A.C. 7:30-6.2(c) above.]

7:30-6.3 Categories

(a) Any commercial pesticide applicator who satisfactorily completes the requirements for Core certification and training pursuant to N.J.A.C. 7:30-6.2 may become certified in one or more of the following categories or subcategories:

1.-5. (No change.)

6. Vegetation management:

i. (No change.)

ii. Category 6B - Right of Way: This subcategory includes commercial pesticide applicators using or supervising the use of pesticides in the maintenance of public roads, industrial weed control on driveways, electric power lines, pipelines, railway rights-of-way, fence lines or other similar linear areas that cross boundaries **and includes the application of insecticides to control pests of turf**

and ornamental plants in these settings.

7.-12. (No change.)

(b) (No change.)

7:30-6.4 Licensing

(a) Within 12 months after a person has become fully certified and eligible to become licensed as a commercial pesticide applicator, the certified commercial pesticide applicator shall complete and file with the Department a license application, and shall include as integral part of the application the annual license fee of \$[75.00]**80.00**.

1.-2. (No change.)

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

(e) A commercial pesticide applicator shall notify the Department, in writing within 30 days, if he or she changes any information on his or her license application [or if he or she is no longer engaged in the application of pesticides].

(f)-(h) (No change.)

7:30-6.5 License renewal

(a) A certified commercial pesticide applicator shall renew his or her license annually with the Department and pay the license renewal fee of \$[75.00]**80.00**.

(b) (No change.)

7:30-6.6 Recertification

(a) In order to maintain his or her certification, the commercial pesticide applicator shall meet the requirements for recertification as specified by the Department [in N.J.A.C. 7:30-6.2]. If the requirements for recertification are not met, the commercial pesticide applicator shall again become certified in accordance with the provisions of this subchapter.

(b)-(e) (No change.)

7:30-6.7 Right of entry or collection of samples

(a) (No change.)

(b) Notification pursuant to (a) above may also consist of a "Notice Of Attempt To Contact [/Inspect/Investigate]" [Form DEQ-081] delivered by hand to an employee, an owner, operator or agent in charge, or sent by certified mail, receipt acknowledged.

1. (No change.)

(c)-(d) (No change.)

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7:30-6.8 Records

(a) A commercial pesticide applicator shall keep, for each application of pesticides made by him or her or under his or her direct supervision, a record of application containing the following information, **unless it is an aquatic pesticide application, in which case a record shall be kept in accordance with N.J.A.C. 7:30-9.3(j):**

1. (No change.)
 - i. For pesticides having a specific REI listed on the label or labeling, the date of application shall include the hour completed **(which signals the beginning of the REI)**; and
 - ii. (No change.)
2. The place of application, namely the specific address, municipality and county;
 - i. For pesticide applications to an agricultural [crop] **commodity**, place of application shall include:
 - (1)-(4) (No change.)
 - ii. (No change.)
3. The brand or trade name, **the active ingredients, and the EPA registration numbers** of [the] **each** pesticide used or symbol representing such [name] **information**, providing the applicator also keeps a list which clearly correlates the symbol used [with full and complete pesticide product name(s) and EPA Registration Number(s)] pursuant to (b)1 below;
4. The [total amount of each] **the “recipe” used to mix the** pesticide [concentrate or formulation used] **as required by the label. The recipe shall consist of:**
 - i. The total amount of pesticide concentrate; and**
 - ii. The total amount of diluent.**
5. The total amount of [diluent] **pesticide mixture used for each individual application.**
 - i. The size of the area treated, when a rate per given area is specified on the label;**
- 6.-7. (No change.)
8. For applications by a commercial applicator of a termiticide, the record shall also include a diagram of the structure treated, depicting:
 - i.-iii. (No change.)
 - iv. Any significant items such as location of known wells, drainage systems, **“porch over basement” situations** and streams and ponds which may be affected by the application.

(b)-(h) (No change.)

7:30-6.11 Responsibility for commercial pesticide operators

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

(c) The commercial pesticide applicator co-signing the license application for the commercial pesticide operator shall be responsible for notifying the Department, Pesticide Control Program, in writing and within 30 days, of any changes in the information

contained on the commercial pesticide operator license application, if such notification has not already been given to the Department by the commercial pesticide operator.

7:30-6.12 Assignment of work

No person shall require any individual to make a pesticide application in any category or subcategory in which the individual [has not been] **is not currently** certified and licensed as an applicator or trained and licensed as a commercial pesticide operator pursuant to this chapter, unless the individual so assigned is applying pesticides by equipment other than aerial and is working under the supervision of a responsible pesticide applicator, certified and licensed pursuant to this chapter, who is employed by the same business and is physically present at the time, site and place of application.

7:30-6.14 Container and Containment Rule

No person shall hold, use, distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State or between points within this State through any point outside this State any pesticide or pesticide container, unless he or she complies with the requirements of 40 C.F.R. Parts 9, 156 and 165 (otherwise known as the Federal Container and Containment regulations).

SUBCHAPTER 7. PESTICIDE APPLICATOR BUSINESSES

7:30-7.1 Licensing

(a)-(e) (No change.)

(f) A licensed business shall notify the Department, in writing and within 30 days, of any changes in any information on its license application [or if the business is no longer engaged in the application of pesticides].

7:30-7.2 Right of entry or collection of samples

(a) (No change.)

(b) Notification pursuant to (a) above may also consist of a “Notice Of Attempt To Contact[/Inspect/Investigate]” [Form DEQ-081] delivered by hand to an employee, an owner, operator or agent in charge, or sent by certified mail, receipt acknowledged.

1. (No change.)

(c)-(d) (No change.)

7:30-7.3 Records

(a) Every business required to become licensed pursuant to the provisions of N.J.A.C. 7:30-7.1 shall keep, for each application of pesticides made by that business, a record of application containing the following information, **unless it is an aquatic pesticide application, in which case a record shall be kept in accordance with N.J.A.C. 7:30-9.3(j):**

1. (No change.)

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- i. For pesticides having a specific REI listed on the label or labeling, the date of application shall include the hour completed (**which signals the beginning of the REI**); and
- ii. (No change.)
2. The place of application, namely the specific address, municipality and county;
 - i. For pesticide applications to an agricultural [crop] **commodity**, place of application shall include:
 - (1)-(4) (No change.)
 3. The brand or trade name, **the active ingredients, and the EPA registration numbers** of [the] **each** pesticide used or symbol representing such [name] **information**, providing the applicator also keeps a list which clearly correlates the symbol used [with full and complete pesticide product name(s) and EPA Registration Number(s)] pursuant to (b)1 below;
 4. The [total amount of each] "**recipe**" used to mix the pesticide [concentrate or formulation used] mixture **as required by the label. The recipe shall consist of:**
 - i. The total amount of pesticide concentrate; and**
 - ii. The total amount of diluent.**
 5. The total amount of [diluent] **pesticide mixture used for each individual application.**
 - i. The size of the area treated, when a rate per given area is specified on the label;**
 6. (No change.)
 7. The site of application[.]; and
 8. For pesticide applicator business applications of a termiticide, the record shall also include a diagram of the structure treated, depicting:
 - i.-iii. (No change.)
 - iv. Any significant items such as location of known wells, drainage systems, **"porch over basement" situations** and streams and ponds which may be affected by the application.

(b) In addition to the records required by (a) above, the pesticide applicator business shall also keep, **in writing**, the information required by (b) 1 through 3 below. This information may be kept separately from the records required by (a) above or may be integrated with such records by including on the record of each pesticide application the full name, active ingredients, and the EPA registration number of the pesticide used and the name of the pesticide applicator or commercial pesticide operator responsible for the application.

1.-3. (No change.)

(c)-(g) (No change.)

7:30-7.5 Assignment of work

No person shall require any individual to make a pesticide application in any category or subcategory in which the individual [has not been] **is not currently** certified and licensed as a

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pesticide applicator or trained and licensed as a commercial pesticide operator pursuant to this chapter, unless the individual so assigned is applying pesticides by equipment other than aerial and is working under the supervision of a responsible pesticide applicator, certified and licensed pursuant to this chapter, who is employed by the same pesticide applicator business and is physically present at the time, site and place of application.

1.-2. (No change.)

7:30-7.9 Container and Containment Rule

No person shall hold, use, distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State or between points within this State through any point outside this State any pesticide or pesticide container, unless he or she complies with the requirements of 40 C.F.R. Parts 9, 156 and 165 (otherwise known as the Federal Container and Containment Regulations).

SUBCHAPTER 8. PRIVATE PESTICIDE APPLICATORS

7:30-8.2 Certification

(a) (No change.)

(b) [A non-refundable examination fee of \$10.00 may be charged for each examination.] **Any person who is assigned a certification examination date, and fails to be present on that examination date without just cause, shall be subject to a \$50.00 fee.**

(c) Application for examinations shall be made on a form supplied by the Department which shall be filed[, along with the examination fee,] with the Department no later than midnight of the closing date for the examination as determined by the Department.

1. Forms may be obtained by contacting the Pesticide Control Program, P.O. Box 411, Trenton, NJ 08625-0411.

7:30-8.7 Right of entry or collection of samples

(a) (No change.)

(b) Notification pursuant to (a) above may also consist of a “Notice Of Attempt To Contact[/Inspect/Investigate]” [Form DEQ-081] delivered by hand to an employee, an owner, operator or agent in charge, or sent by certified mail, receipt acknowledged.

1. (No change.)

(c)-(d) (No change.)

7:30-8.8 Records

(a) Any person required to be licensed as a private pesticide applicator shall keep, for each application of a pesticide made by him or her or under his or her direct supervision, a record of application containing the following information **unless the application is of aquatic pesticide, in which case a record shall be kept in accordance with N.J.A.C. 7:30-9.3(j):**

1. The date of application;

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- i. For pesticides having a specific restricted entry interval (REI) on the label or labeling, the date of application shall include the hour completed **(which signals the beginning of the REI)**; and
 - ii. (No change.)
 2. The place of application;
 - i. For pesticide applications to an agricultural [crop] **commodity**, place of application shall include:
 - (1)-(4) (No change.)
 3. The brand or trade name, **the active ingredients, and the EPA registration numbers** of each pesticide used or symbol representing such [name] **information**, providing the business also keeps a list which clearly correlates the symbol used [with full and complete pesticide product name(s) and EPA Registration Number(s)] pursuant to (b)1 below;
 4. The [total amount of each] **“recipe” used to mix the** pesticide [concentrate or formulation used] mixture, **as required by the label. The recipe shall consist of:**
 - i. The total amount of pesticide concentrate; and**
 - ii. The total amount of diluent.**
 - 5. The total amount of [diluent] mixture used for each individual application.**
- (b)-(f) (No change.)

7:30-8.13 Responsibility for the action of employees

Notwithstanding the responsibility of any other person or the exemption from the provisions of any other section of this subchapter, each employer shall be held responsible for any violation of the act committed by his or her employee in the scope of his or her employment. This responsibility shall be joint and several.

7:30-8.14 Container and Containment Rule

No person shall hold, use, distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State or between points within this State through any point outside this State any pesticide or pesticide container, unless he or she complies with the requirements of 40 C.F.R. Parts 9, 156 and 165 (otherwise known as the Federal Container and Containment Regulations).

SUBCHAPTER 9. PESTICIDE EXPOSURE MANAGEMENT

7:30-9.1 **Reserved** [Mosquito/fly control]

(a) No person shall apply any pesticide for the community or areawide control of the larval or adult forms of mosquitoes and/or flies (Order Diptera) unless the pesticide application conforms to New Jersey Agricultural Experiment Station Publication No. – 40001-01-99, Insecticides Recommended for Mosquito Control in New Jersey, or the most current edition of this publication, which is incorporated herein by reference.

- (b) The provisions of (a) above shall not apply to pesticide applications made for

agricultural purposes.]

7:30-9.2 Mosquito/fly control permits

(a) No person shall apply any pesticide on a community or area wide basis for the control of larval, **pupal** or adult forms of mosquitoes (**in the Family Culicidae**) and/or flies (in the Order Diptera) without having obtained a mosquito/fly control permit from the Department prior to the date of application.

(b)-(h) (No change.)

(i) The Department may not require fulfillment of the formal permit application provisions of (c) above if the Department determines there is an emergency situation that warrants expedited review. (See the definition of "emergency" in N.J.A.C. 7:30-1.2.) This provision shall be exercised only if the information necessary to adequately review the permit is on file with the Department. Notification of an emergency situation shall be made to the Pesticide Control Program by calling (609) 984-6[666]**507**.

(j) (No change.)

7:30-9.3 Aquatic pesticide permits

(a) (No change.)

(b) An aquatic pesticide permit shall not be required if the application is to waters of the State [which are not used as a source of potable water] and:

1. The application is made to waters which **are not used as a source of potable water**, have no outlet and which are bounded by land wholly owned or rented, and controlled, by one person;
2. The application is made **to waters which are not used as a source of potable water and is made** for the control of mosquitoes or flies and the application procedure requires approval pursuant to the provisions of N.J.A.C. 7:30-9.2(a) or the application is made by the appropriate lead agency operating under the provisions of the Mosquito Extermination statutes (N.J.S.A. 26:9-1 et seq.);
3. The application is made to retention basins, drainage ditches with no water flow, and similar sites that are designed to collect and retain water for percolation back into the ground, **which are not used as a source of potable water, and** where there is no normal outflow into natural waterways; or
4. (No change.)

(c) Applications for an aquatic pesticide permit shall be made on forms supplied by the Department at least 30 days prior to the intended application date.

1. Any information requested on the form shall be [submitted] **accurate at the time of submission**.
- 2.-4. (No change.)

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(d)-(i) (No change.)

(j) All written records required by the aquatic permit must conform to the requirements listed on the “Record of Actual Treatment” (Form BPO-03) or the “Record of Actual Treatment Sodium Hypochlorite Solution” (Form BPO-06).

(k) An aquatic pesticide permit shall be valid for the time period specified in the permit at the time of approval.

7:30-9.5 Storage of pesticides

(a) (No change.)

(b) Any person required to be a licensed pesticide applicator **or dealer** who stores any pesticide shall maintain a list of the pesticides stored or likely to be stored during the license year and shall annually send a copy of this list with an explanatory cover letter to the local fire company along with [the actual location of the storage area] **a written description or diagram depicting the exact location of the area on the property where the pesticide is stored;** provided that the provisions of this subsection shall not apply to individuals who are storing pesticides for their personal use on their private residence or persons who are storing pesticides for less than seven calendar days at loading or application sites in connection with their use.

1.-4. (No change.)

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

(f) No person shall store or transport pesticides in any service vehicle unless:

1.-5. (No change.)

6. The service vehicle is equipped with at least [a] **an accessible and working** 10-B:C dry chemical, or carbon dioxide fire extinguisher;

7.-9. (No change.)

(g)-(i) (No change.)

7:30-9.6 Containers and container labeling

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

(d) No person shall hold, use, distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State or between points within this State through any point outside this State any pesticide or pesticide container, unless he or she complies with the requirements of 40 C.F.R. Parts 9, 156 and 165 (otherwise known as the Federal Container and Containment regulations).

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. The location 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.)

7:30-9.12 Notification: household or structural pest control

(a) (No change.)

(b) At single family residences, no commercial application of pesticides shall be made for the control of household or structural pests without the following provisions being carried out, and sufficient time given to take appropriate precautions, if needed, to minimize potential exposure to individuals, pets and non-target sites; except as delineated in (b)3 below:

1. No application shall be made until the residents of the property are given the opportunity to review the following consumer information notice which shall be provided by the commercial applicator or applicator business in writing **or by electronic mail** to the contracting party/residents and shall contain, at a minimum, the following:
 - i.-v. (No change.)
 - vi. The telephone number of the Pesticide Control Program and the statement: "This number **is** for pesticide regulation information[,], **and** pesticide complaints [and health referrals.]";
 - vii.-ix. (No change.)
2. (No change.)
3. The applicator or applicator business is exempt from the provisions of (b)1 above if the contracting party/resident and the buyer, if applicable, signs a waiver **or confirms agreement by electronic mail of such waiver,** which states that the written information is declined:
 - i.-iv. (No change.)
4. (No change.)

(c) At multiple family residences, no commercial application of pesticides shall be made for the control of household or structural pests without the following provisions being carried out, and sufficient time given to take appropriate precautions, if needed, to minimize potential exposure to individuals, pets and non-target sites; except as delineated in (c)6 below:

- 1.-3. (No change.)

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4. No application shall be made until the contracting party has been given the opportunity to review the following consumer information notice, a copy of which shall be provided by the commercial applicator or applicator business in writing **or by electronic mail** to the contracting party, tenants, or residents and which shall contain, at a minimum, the following:
 - i.-v. (No change.)
 - vi. The telephone number of the Pesticide Control Program and the statement: "This number **is** for pesticide regulation information[,] **and** pesticide complaints[, pesticide toxicology information and health referrals].";
 - vii.-ix. (No change.)
5. (No change.)
6. The applicator or applicator business is exempt from the provisions of (c)4 above if the contracting party, tenant or resident signs a waiver **or confirms agreement by electronic mail of such waiver**, which states that the written information is declined.
 - i.-v. (No change.)
- 7. Common areas (hallways, storage areas or laundry rooms) of structures with multiple residential units are considered commercial buildings which require structural notification pursuant to (d)3 below.**

(d) At institutions, commercial, industrial or public buildings, no commercial application of pesticides shall be made for the control of household or structural pests without the following provisions being carried out, and sufficient time given to take appropriate precautions, if needed, to minimize potential exposure to individuals, pets and non-target sites:

1. No application shall be made until the contracting party and the building manager, or building contact person of the individual location, if different than the contracting party, has been given the opportunity to review the following consumer information notice, a copy of which shall be provided by the commercial applicator or applicator business in writing **or by electronic mail**:
 - i.-v. (No change.)
 - vi. The telephone number of the Pesticide Control Program and the statement: "This number **is** for pesticide regulation information[,] **and** pesticide complaints[, and health referrals].";
 - vii.-ix. (No change.)
 - 2.-4. (No change.)
- (e)-(f) (No change.)

7:30-9.13 Notification: turf or ornamental applications

- (a) (No change.)

(b) At single family residences, no commercial application of pesticides shall be made for the control of turf or ornamental pests on residential properties without the following provisions being carried out and sufficient time given to take appropriate precautions, if needed, to minimize potential exposure to individuals, pets and non-target sites, except as delineated in (b)4 below:

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1. Signs shall be posted on the treated property, at the start of the application and may be removed after 72 hours.
 - i. The signs shall **be white in color and** bear the [following information] **words, "Pesticide Treated Area"** in letters at least one-half inch high [:"Pesticide Treated Area"];
 - (1) **All of the information required in (b)1i through (b)1v, shall be printed in a dark color, which sufficiently contrasts with the white background of the signs;**
 - ii.-v. (No change.)
 - vi. The signs shall be placed in such a manner:
 - (1)-(2). (No change.)
 - vii. The applicator or applicator business shall be responsible for posting and removing the signs; however, the applicator business may delegate to the contracting party, in writing, the removal of the signs.
 2. No application shall be made until the contracting party has been given the opportunity to review the following consumer information notice, a copy of which shall be provided by the commercial applicator or applicator business in writing **or by electronic mail:**
 - i.-v. (No change.)
 - vi. The telephone number of the Pesticide Control Program and the statement: "This number **is** for pesticide regulation information[,] **and** pesticide complaints[, and health referrals].";
 - vii.-viii. (No change.)
 3. (No change.)
 4. The applicator or applicator business is exempt from the requirement to provide the information pursuant to (b)2 above if the contracting party signs a waiver **or confirms agreement by electronic mail of such waiver,** which states that the written information is declined.
 - i.-v. (No change.)
 5. (No change.)
- (c) At multi-family residences, industrial and commercial buildings, no commercial application of pesticides shall be made for the control of turf or ornamental pests without the following provisions being carried out and sufficient time given to take appropriate precautions, if needed, to minimize potential exposure to individuals, pets and non-target sites:
1. Signs shall be posted on the treated property at the start of the application and may be removed after 72 hours.
 - i. The signs shall **be white in color and** bear the [following information] **words, "Pesticide Treated Area"** in letters at least one-half inch high [:"Pesticide Treated Area"];
 - (1). **All of the information required in (b)1i. through (b)1v., shall be printed in a dark color, which sufficiently contrasts with the white background of the signs;**
 - ii.-vi. (No change.)

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- vii. The applicator or applicator business shall be responsible for posting **and removing** the signs; **however, the applicator business may delegate to the contracting party, in writing, the removal of the signs.**
 2. No application shall be made until the contracting party and the building manager or building contact person of the individual location, if different, has been given the opportunity to review the following consumer information notice, a copy of which shall be provided by the applicator or applicator business in writing **or by electronic mail:**
 - i.-v. (No change.)
 - vi. The telephone number of the Pesticide Control Program and the statement: "This number **is** for pesticide regulation information[,], **and** pesticide complaints [and health referrals].";
 - vii.-viii. (No change.)
 3. (No change.)
 4. The applicator or applicator business is exempt from the requirement to provide the information pursuant to (c)2 above if the contracting party, or the building manager/building contact person, signs a waiver **or confirms agreement by electronic mail of such waiver,** which states that the written information is declined.
 - i.-v. (No change.)
 5. (No change.)
- (d) At golf courses, no commercial application of pesticides shall be made for the control of turf or ornamental pests without the following provisions being carried out:
1. (No change.)
 2. Any person asking the applicator or applicator business about pesticides used at the golf course shall be informed that the following information is available if requested in writing. The applicator or applicator business shall provide the following information within two weeks:
 - i.-ii (No change.)
 - iii. The telephone number of the Pesticide Control Program and the statement: "This number **is** for pesticide regulation information[,], **and** pesticide complaints [and health referrals]."
 - 3.-4. (No change.)
- (e) At schools, institutions, parks and similar sites, no commercial application of pesticides shall be made for the control of turf or ornamental pests without the following provisions being carried out:
1. (No change.)
 2. The signs shall **be white in color and** bear the following information in letters at least one-half inch high: "Pesticide Treated Area.";
 - i. All of the information required in (e)1-5, shall be printed in a dark color, which sufficiently contrasts with the white background of the signs;**
 3. The signs shall also contain a minimum two inch diameter circular illustration, in standard international signage, depicting an adult and a child on a lawn, walking a

- dog on a leash. The illustration shall depict, with a diagonal line across the circle, that this action is prohibited[.];
4. The signs shall also bear the name of the applicator or applicator license number only if not employed by a pesticide applicator business; or if the application is made by a pesticide applicator business, the signs shall bear the name of the applicator business or the business license number[.];
 5. The signs shall also bear the telephone number of the applicator or applicator business.
 6. The applicator or applicator business shall be responsible for posting the signs.
 7. No application shall be made until the contracting party and the site manager, that is, the head of the school, institution or park, has been given the opportunity to review the following consumer information notice, which shall be provided by the applicator or applicator business in writing **or by electronic mail**:
 - i.-v. (No change.)
 - vi. The telephone number of the Pesticide Control Program and the statement: "This number **is** for pesticide regulation information[,], **and** pesticide complaints[,], pesticide toxicology information and health referrals[.]";
 - vii.-viii. (No change.)
 8. If the contracting party or site manager requests prior notification of the specific date of application, or a copy of the label(s) of the pesticides used, such information shall be provided by the applicator or applicator business.
- (f) (No change.)

SUBCHAPTER 10. PESTICIDE USE

7:30-10.2 Pesticide use and/or application

- (a)-(d) (No change.)

(e) No person shall make any application of a pesticide unless he or she takes reasonable precautions, before, during and after the application, to minimize exposure of individuals or the environment to the pesticide and [insure] **ensure** the safety of any individuals or the environment [necessarily] **consequently** exposed. Such precautions shall include, but not be limited to, transmittal from the applicator to the exposed and/or potentially exposed individual of precautionary label statements relevant to such individuals or the environment.

- (f)-(m) (No change.)

(n) No person shall make an application of any pesticide, except for rodenticides, insect baits and antimicrobial agents, in or around a day care facility, during normal operating hours, as set by the school administration. After normal operating hours, or for the exceptions in (n)1 and 2 below, applications can be made in areas where children will not contact treated areas until [label re-entry or] ventilation requirements **and the numerical re-entry time prescribed on the label** have been met, or if there is no [specific] **numerical** re-entry time prescribed on the label, until seven hours have passed.

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1.-3. (No change.)

(o)-(p) (No change.)

7:30-10.3 Rodent baiting

(a) (No change.)

(b) No person shall use or otherwise possess any pesticide in any rodent bait box or bait tray unless:

1. The bait box is secured against tampering when placed in areas accessible to pets, domestic animals, non-target wildlife or children; and
 - i. The bait box or tray has attached to **the exterior** [it or contained therein as part of the actual packaging of the pesticide], a copy of the registered label of the pesticide; or
 - ii. The bait box or tray has attached to **the exterior** [it] a readable label with the following information about the pesticide contained therein:

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

(c) For purposes of interpretation of (b) above, a bait box shall be considered tamper-resistant when:

1. It has met the standards for tamper-resistant bait boxes used by the EPA in PR-Notice [83] **94-57**, incorporated herein by reference; or
- 2.-3. (No change.)

(d) (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.** **At 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.**

(b)-(i) (No change.)

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(j) No person shall make an application of a termiticide to an inaccessible space unless applied pursuant to the following restrictions:

1.-2. (No change.)

3. If there is less than two feet of clearance and if entry can be made into the area to be treated, soil may be removed to obtain adequate clearance and treatment may be made consistent with label directions, provided that proper ventilation exists or can be provided pursuant to (i)2 above; or

i. If the ceiling of the space is concrete and[, if] entry [can] **cannot** be made, drill through the foundation walls from the exterior at an angle and rod beneath the soil surface, or drill vertically through the ceiling of the space and rod beneath the soil surface.

(k)-(m) (No change.)

(n) Retreatments with termiticides, except termiticide baits, are allowed only **after five years have elapsed after a treatment, or** when there is evidence of reinfestation subsequent to the initial treatment, or if there is a disruption of the pesticide barrier in the soil due to construction, excavations, or landscaping. In cases of disruption of the soil barrier, only those locations where this occurred may be retreated. In cases of evidence of termite infestations, the entire premises may be treated if:

1.-2. (No change.)

(o)-(q) (No change.)

7:30-10.6 Aerial application of pesticides

(a) All agricultural aircraft operations in New Jersey shall comply with those parts of [F.A.R.-137] **14 C.F.R. Part 137 – Agricultural Aircraft Operations** not covered in this section. In the case of conflict, a regulation of [F.A.R.-137] **14 C.F.R. Part 137 – Agricultural Aircraft Operations** shall take precedence over any of this section.

1. An agricultural aircraft operator may be required to provide proof of current licensing as an agricultural aircraft operator in order to obtain a New Jersey pesticide applicator license.

(b)-(m)(No change.)

(n) [Aerial pesticide application for non-agricultural purposes shall be performed on a target site less than three contiguous acres in size, only in accordance with (o) below.] **(Reserved)**

(o)-(y) (No change.)

7:30-10.8 Assessment of fees for sample analysis

(a) In any situation involving a suspected misapplication or spill of a pesticide and where the sample(s) as collected during any inspection and sampling date define **or help to define** a

violation of the Act or regulations promulgated thereunder or show the need for collection of additional samples to define the extent of the contamination as required by the Department to fully evaluate the procedures necessary to remedy said violation, a fee for all sampling may be assessed against the person responsible for the violative application or spill, such fee to reflect the actual cost incurred by the Department for the analyses of the sample(s).

(b) (No Change.)

(c) Fees for pesticide sample analysis of formulations are as follows:

1. Liquids, except detergents: \$[300]~~600~~/sample.
2. Powders: \$[340]~~680~~/sample.
3. Aerosols, baits, traps, and detergents: \$[400]~~800~~/sample.
4. User dilution: \$[500]~~1,000~~/sample.

(d) Fees for pesticide sample analysis of residues are as follows, reflecting a cost [per analyte. Each additional increases the applicable fee by 10 percent] **when utilizing existing Pesticide Laboratory methods, including residue scans:**

1. Swab (surficial wipe): \$[125.00]~~375.00~~/sample.
2. Air (puf): \$150/sample.]
- 3.]~~2.~~ Air (sorbent tube): \$[100.00]~~375.00~~/sample.
- 4.]~~3.~~ Water (**Solid Phase Extraction**): \$[150.00]~~525.00~~/sample.
- 5.]~~4.~~ Soil: \$[225.00]~~560.00~~/sample.
- 5. Vegetation** **\$560.00/sample.**
- 6. Commodity (Fruits and Vegetables):** **\$725.00/sample.**
- 7. Filter Paper:** **\$450.00/sample.**
- 6.]~~8.~~ Animal tissue: \$[250.00]~~725.00~~/sample.

(e) The fee for a [pesticide scan shall be \$250 per group] **Phenoxy Acid Herbicide scan in any sample matrix shall be \$625.00/sample.**

(f) Any sample requiring extra preparatory work or special analysis shall be charged \$[100.00]~~300.00~~ per hour for the preparatory work, derivitization or special analysis in addition to the fees specified in (c), (d) or (e) above.

7:30-10.9 Submission of data on pesticide distribution or use

- (a) (No change.)
 - 1.-2. (No change.)
 3. The site(s) of application or sale, including the **crop, commodity, specific field, greenhouse or land area, including the** municipality and county; and
 4. (No change.)
- (b) (No change.)

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7:30-11.1 Grace period

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

(d) Where the Department, or a local county government agency operating under the County Environmental Health Act (CEHA) N.J.S.A. 26:3A2-21 et seq., discovers a violation which is designated as minor in accordance with the table in N.J.A.C. 7:30-11.2 and in accordance with (c) above, it shall issue a notice of violation to the person responsible for the minor violation which:

1. Identifies the condition or activity that constitutes the violation and the specific statutory and regulatory provision or other requirement violated; and
2. Notifies the person responsible for the violation that a penalty may be imposed under the Pesticide Control Act and this chapter, as applicable, unless compliance is achieved within the time period provided for the violation as set forth in (a) above.

3. A penalty shall not be assessed for any violation of subchapter 13.

(e) If the person responsible for a minor violation corrects that violation and achieves compliance within the period specified in the notice of violation issued pursuant to this section, the Department shall not seek penalties for the violation.

1. Any person responsible for a violation may be required to submit to the Department written information as to the corrective action taken or compliance achieved, and shall do so within the prescribed compliance time period provided for the violation in this subchapter.

(f) If the person responsible for the violation fails to achieve compliance within the period of time specified in the notice of violation, the Department may, in accordance with the provisions of the Act or this chapter, impose a penalty which is retroactive to the date the notice of violation was first issued.

1. A penalty shall not be assessed for any violation of subchapter 13.

(g) Persons who commit major violations will not be accorded a grace period and are subject to the penalty provisions of the Pesticide Control Act and this chapter, as applicable.

1. A penalty shall not be assessed for any violation of subchapter 13.

7:30-11.2 Pesticide Control Code violation table

(a) The violations in the table below have been designated as minor or non-minor in accordance with the criteria in N.J.A.C. 7:30-11.1 (c) 2, 3, and 8. In the table, “M” means minor, and “NM” means non-minor. The violation text in the table below is merely a description of a violation and is not intended for use as a guide for regulatory compliance. For the complete text of a rule, refer to the appropriate section and paragraph in this chapter.

Citation (N.J.A.C. 7:30-	Violation	M	NM
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<u>2.1(o)</u>	<u>Failure of registrant to follow the requirements of the Federal Container and Containment regulations, as incorporated by reference</u>		<u>NM</u>

<u>2.7(k)</u>	<u>Failure of any person to follow the requirements of the Federal Container and Containment regulations, as incorporated by reference</u>		<u>NM</u>

3.9(a)	Selling a pesticide(s) to an unlicensed person without [providing] <u>giving</u> the required information sheet <u>or failing to maintain a record of who is given the information sheet</u>		NM

<u>3.13</u>	<u>Failure of any person who is a dealer to follow the requirements of the Federal Container and Containment regulations, as incorporated by reference</u>		<u>NM</u>

4.4(a)	Selling a pesticide to an unlicensed person without providing the required information sheet <u>or failing to maintain a record of who is given the information sheet</u>		NM

<u>4.8</u>	<u>Failure of any person who is a dealer business to follow the requirements of the Federal Container and Containment regulations, as incorporated by reference</u>		<u>NM</u>

<u>6.11(c)</u>	<u>Failure of the co-signer for a commercial pesticide operator license to notify the Department of changes in the registration information</u>	<u>M</u>	

<u>6.14</u>	<u>Failure of any person who is a commercial pesticide applicator to follow the requirements of the Federal Container and Containment regulations, as incorporated by reference</u>		<u>NM</u>

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<u>7.9</u>	<u>Failure of any person who is a commercial pesticide applicator business to follow the requirements of the Federal Container and Containment regulations, as incorporated by reference</u>		<u>NM</u>

<u>8.14</u>	<u>Failure of any person who is a private pesticide applicator to follow the requirements of the Federal Container and Containment regulations, as incorporated by reference</u>		<u>NM</u>

[9.1(a)]	[Failure to conform to the applicable State guidelines while performing a mosquito or fly control application]		[NM]

<u>9.3(j)</u>	<u>Failure to conform to the recordkeeping requirements of the “Record of Actual Treatment” (BPO-03 and BPO-06)</u>		<u>NM</u>

9.5(b)	Failure to maintain, or send the list of pesticides stored (and <u>a written description or diagram depicting the exact</u> location) to the local fire company with cover letter		NM

<u>9.6(d)</u>	<u>Failure to conform to the requirements of the Federal Container and Containment regulations, as incorporated by reference</u>		<u>NM</u>

9.13(b)1	Failure to post <u>the proper</u> signs when making turf and/or ornamental applications		NM

9.13(c)1	Failure to post <u>the proper</u> signs at a multi-family residence, industrial or commercial building		NM

[10.6(n)]	[Making an aerial pesticide application for a non-agricultural purpose using any aircraft on a target site less than three contiguous acres in size.]		[NM]
<u>10.6(o)</u>	<u>The application site of less than three acres was not part of a larger property or contiguous properties that together totaled more than three acres</u>		<u>NM</u>

SUBCHAPTER 13. INTEGRATED PEST MANAGEMENT IN SCHOOLS

7:30-13.2 Integrated Pest Management Plan

(a) As a requirement of its IPM Policy, each school shall develop and implement a site-specific IPM Plan that describes how the school will manage pests through IPM methods and comply with all aspects of the IPM Policy. **The site specific IPM Plan shall be maintained at the school for which it was developed.** The Department shall provide a model IPM Plan for schools and make this available as part of training and compliance assistance materials.

1.-3. (No change.)

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

7:30-13.3 Integrated pest management coordinator

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

(c) Each school shall submit the following information to the Department:

1. The **full [N]name and title** of the IPM coordinator; **and**

i. The birth date of the IPM Coordinator; and

ii. The telephone number, work address and electronic mail address.

2. Name and physical address (and mailing address if different) of the school(s) or school district for which the IPM coordinator is responsible; **and**

i. The name, title, mailing address and telephone number of the head of the local school board or the lead administrator of a private or charter school.

3. County, district and school code of **each school for which the IPM Coordinator is responsible**, or **any** other identifying school information;

[4. Telephone number of the IPM coordinator;

5. Electronic mailing address of the IPM coordinator, if available; and]

[6.]**4.** A statement certifying that the IPM coordinator has received DEP approved training in order to implement the IPM Policy and Plan[.]; **and**

5. Any changes in the designation of the IPM coordinator shall be submitted to the Department within 30 days, including the name of the former IPM coordinator, and the name of the newly designated IPM coordinator.

7:30-13.4 Records

(a) The local school board of a school district, the board of trustees of a charter school, or the principal or lead administrator of a private school, as appropriate, shall request from the commercial pesticide applicator and shall maintain records of pesticide applications used on school property in accordance with the following:

1.-3. (No change.)

4. Records shall be immediately provided to the Department upon request; [and]

5. Records shall be provided immediately to medical personnel in emergency situations; and

[5.]**6.** Records shall include, at a minimum, the application records required at N.J.A.C. 7:30-6.8 and 7.3.

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(b) (No change.)

7:30-13.8 Other than Low Impact Pesticide Applications: Prohibitions

(a) 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 State 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.

(b)-(e) (No change.)

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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 proposed readoption with amendments. I hereby authorize this proposal.

Date: _____

Lisa P. Jackson
Commissioner