

PESTICIDE CERTIFICATION & TRAINING



Department of
Environmental
Conservation

January 2019 Stakeholder Meeting

The Pesticide Certification and Training portion of Part 325 will be moved to its own Part. In addition, the Department requests stakeholder input on the following proposals:

- **Incorporate the federal Certification of Pesticide Applicators rule**

Concern – The Department has to incorporate all of the mandatory requirements of the federal Certification of Pesticide Applicators rule to maintain its primacy enforcement authority.

- Federal Requirement – Establish a nation-wide minimum age of 18 for all certified applicators and noncertified applicators working under their direct supervision.
- Proposed changes to regulations:
 - Change minimum age for certified private applicators from 17 to 18;
 - Establish a minimum age of 18 for certified commercial applicators;
 - Change minimum age for technicians from 17 to 18
 - Maintain the minimum age for apprentices as 16 but prohibit apprentices from handling restricted use pesticides (RUPs) until they turn 18.
- Federal Requirement – Requires certification categories be established for private and commercial applicators performing aerial application, soil fumigation and non-soil fumigation.
- Proposed changes to the regulations:
 - Add a soil/non-soil fumigation to both commercial and private applicator certification categories
 - Eliminate the one aerial category for both private and commercial applicators and replace with separate aerial categories for private and commercial applicators.
- Federal Requirement – Requires annual training for noncertified applicators
- Proposed changes to the regulations:
 - Technicians take core training each year during 3-year certification cycle
 - Apprentices take Department approved course annually in addition to the existing initial training requirement.
- Federal Requirement – Requires recordkeeping for noncertified applicator training.
- Proposed changes to the regulations:
 - Add the apprentice annual training records to the current apprentice training records requirements; and
 - Add annual training record requirements for technician training.
- Federal Requirement – Eliminate non-reader certification for private applicators, which allows persons who cannot read to obtain certification to use specific RUPs.
- Proposed change to the regulations:
 - Eliminate Special Permits.
- Federal Requirement – Require use of only materials approved by the State certifying authority and provided and collected by the proctor at the certification examinations.
- Proposed changes to the regulations:
 - Initiate closed book certification examinations and prohibit applicants from bringing reference materials to the exam.

- **Streamline Pesticide Certification Categories**

Concern - There are numerous categories and subcategories currently, making it difficult for applicators to initially qualify and obtain recertification credits. In addition, certain certification categories have overlapping application methods, sites and/or uses.

- Proposed Changes to the Regulations:

- Renumber the categories and remove the current “subcategory” language.
 - Redefine some categories to include items currently allowed through policy documents or enforcement discretion memoranda (eg. Category 7a-Structural & Rodent allowance for asphyxiants for rodent control).
 - Combine similar categories to allow applicants to meet qualification requirements more easily.

- **Add Certification Categories**

Concern – Pesticide applications conducted for mold remediation are not adequately regulated. In addition, there are no categories of certification that allow for the application of restricted use antimicrobials. Certain mold remediation products may need re-classification to “Restricted Use” in New York State.

- Proposed Changes to the Regulations:

- Create a category for the use of antimicrobials for mold remediation.
 - Include business registration requirements for businesses providing mold remediation services.

- **Update Certification Eligibility (aka 30 Hour) Course Requirements**

Concern- Certain certification categories do not need a 30- hour course to explain all of the material necessary for initial eligibility. Other categories may need additional training beyond 30 hours.

- Proposed Changes to the Regulations:

- Modify the 30- hour course requirement so that its elements reflect the complexity of the particular category.
 - Establish a core training standard for initial certification.

- **Develop a Core Recertification Credit Requirement**

Concern - Some certified applicators choose to recertify with only category-specific training; these applicators may be missing out on updated safety and/or regulatory information pertinent to the industry.

- Proposed Changes to the Regulations:

- Develop a minimum core credit requirement for all categories’ recertification.

- **Eliminate Penalty Credits**

Concern - Continuing education credits should not be used as a penalty. The requirement for penalty credits causes confusion.

- Proposed Changes to the Regulations:

- Revise recertification expiration deadlines.
 - Simplify the process for reinstatement.
 - Possibly require examination or monetary penalty in lieu of penalty credits.

- **Limit Supervision of Apprentices**
Concern - It is difficult to adequately supervise numerous apprentices from multiple locations during a workday.
 - Proposed Changes to the Regulations:
 - Limit the number of apprentices supervised by a certified applicator.

- **Allow Access to Apprentice Training Records**
Concern - Apprentices can encounter difficulties in obtaining proof of training history.
 - Proposed Changes to the Regulations:
 - Require supervising applicators to provide training records to apprentices upon request
 - Require training records to be maintained throughout apprentice's employment and a minimum of 3 years after apprentice's employment.

- **Course Sponsor and Instructor Requirements**
Concern - Existing Department procedures for training courses are not outlined in regulation.
 - Proposed Changes to the Regulations:
 - Incorporate procedures regarding courses into regulations.
 - Clarify requirements for instructor credentials.

CONTACT INFORMATION

Pesticide Certification & Training Regulations

New York State Department of Environmental Conservation

Bureau of Pesticides Management

625 Broadway

Albany, New York 12233-7254

P: (518) 402-8788 | pestregs@dec.ny.gov

www.dec.ny.gov

PESTICIDE BUSINESS & AGENCY REGISTRATION

RESTRICTED PESTICIDES DEALERS COMMERCIAL PERMIT



Department of
Environmental
Conservation

January 2019 Stakeholder Meeting

The Business and Agency Registration and Commercial Permit portions of Part 325 and Part 326 will be moved to their own Parts and revised. The Department requests stakeholder input on the following proposals:

- **Update Business Registration Requirements**

Concern - Existing regulations need clarification and updating to include current Department business registration procedures and current business practices.

- Proposed changes to the regulations:

- Specify businesses and locations that must register:
 - Those that advertise pesticide services or apply pesticides for-hire.
 - Each legal business name and a limited number of DBA's per registration.
 - Each place-of-business location.
 - Out-of-state companies applying in NY.
- Allow an unregistered business to subcontract to a registered business:
 - Develop appropriate regulatory language to allow for the common practice of subcontracting.
- Update business insurance requirements:
 - Update NY regulations to be similar to other states' requirements. Many states require an endorsement covering pesticide applications, in most categories, but have lower liability coverage limits.
- Clarify requirements and set restrictions for employees and supervising applicators:
 - Persons applying pesticides or supervising the application of pesticides must be (W-2) employees. Contractors/consultants may not supervise the application of pesticides or apply pesticides.
 - A certified commercial applicator may supervise at a limited number of business location(s).
 - Persons in a non-supervisory role may be employed by multiple businesses.
- Allow technicians to register businesses in most categories:
 - Expand the categories of certification with which a technician can register a business.
 - Specify certain categories requiring use of RUP's to employ a certified commercial applicator.
- Modify vehicle and equipment identification requirements:
 - Eliminate decals for pesticide vehicles and ride-on equipment.
 - Pesticide Businesses would place the registration number on each vehicle as required for registered businesses in both CT and NJ.

- **Update Agency Registration Requirements**

Concern - Existing regulations need updating, clarification, and a provision allowing for Agency Shared Services Agreements.

- Proposed changes to the regulations:
 - Clarify agency registration requirements:
 - Specify the agencies and locations that must be registered.
 - Not-For-Profit Organizations that Apply Pesticides:
 - Not covered by Article 33 or Part 325. Should NFP's be required to register as Pesticide Businesses?
 - Allow for Agency Shared Services Agreements:
 - Set standards for acceptable Shared Services Agreements between municipalities for pesticide applications.

- **Update Commercial Permit Holder (Restricted Pesticide Dealer) Requirements**

Concern – The Department has to incorporate all of the mandatory requirements of the federal Certification of Pesticide Applicators rule to maintain its primacy enforcement authority.

- Federal Requirement – Recordkeeping requirements for Restricted Use Retail Dealers.
- Proposed changes to regulations:
 - Expand existing Commercial Permit recordkeeping requirements to include:
 - Name and address of certified applicator who purchased the Restricted Use Product (RUP)
 - Certification expiration date of certified applicator who purchased the RUP
 - Certification category relevant to RUP purchased

- **Consolidate Commercial Permit (Restricted Pesticide Dealer) Requirements**

Concern - Regulations for RUP sales are currently in multiple parts of the regulations. The Department needs to clarify Commercial Permit requirements.

- Proposed changes to the regulations:
 - Combine regulations for Commercial Permits and RUP sales into one new Part.
 - Refer to Commercial Permit Holders as Restricted Pesticide Dealers, to be consistent with other States.
 - Require commercial permit for e-sales/e-commerce internet sales of RUP's
 - Clarify sales and delivery of RUPs:
 - Who can purchase or possess RUPs.
 - RUP delivery requirements.

CONTACT INFORMATION

Pesticide Business & Agency Registration

Restricted Pesticides Dealers Commercial Permit Regulations

New York State Department of Environmental Conservation

Bureau of Pesticides Management

625 Broadway

Albany, New York 12233-7254

P: (518) 402-8788 | pestregs@dec.ny.gov

www.dec.ny.gov

PESTICIDE USE

January 2019 Stakeholder Meeting



Department of
Environmental
Conservation

The Pesticide Use portion of Part 325 will be rewritten as its own Part. In addition, the Department requests stakeholder input on the following proposals:

- **Incorporate the federal Certification of Pesticide Applicators Rule**

Concern - The Department must incorporate all of the mandatory requirements of the federal Certification of Pesticide Applicators rule to maintain its primary enforcement authority.

- Federal Requirement – Establish supervision requirements for commercial and private pesticide applicators
- Proposed changes to regulations:
Indicate that supervising applicators must:
 - Ensure noncertified applicators under their supervision are qualified:
 - Be at least 18 (or at least 16 for immediate family member of the supervising private applicator)
 - Have the required annual training or satisfied worker protection standard (WPS) training requirements within the last 12 months.
 - Have instruction within the last 12 months about the safe operation of pesticide application equipment.
 - Ensure noncertified applicators under their supervision have:
 - A means for immediate communication with the supervising certified applicator.
- Federal Requirement – Establish additional recordkeeping requirements for certified commercial applicators.
- Proposed changes to the regulations:
 - Add to the commercial applicator record keeping requirements – the name and address of the person for whom the application is made, the size of treated area, time of application, name and certification number of certified applicator that made or supervised the application, and the name of noncertified applicator that made the application if applicable.

- **Revise Termite Regulations**

Concern - Industry standards have changed since regulations were developed.

- Proposed changes to the regulations:
 - Update the regulations to reflect the current practices.

- **Update pesticide storage requirements**

Concern - The current regulations provide minimal detail pertaining to pesticide storage.

- Proposed changes to the regulations:
 - Direct users to follow requirements on the pesticide label.
 - Provide more detailed requirements for pesticide storage beyond those listed on the pesticide label.

- **Develop Labeling Requirements for Alternative Containers**

Concern - Current regulations lack any requirements regarding the proper labeling of pesticides that are not in the manufacturer's original container, referred to as alternative pesticide container in the law.

- Proposed changes to the regulations:
 - Require the proper labeling of alternative pesticide containers.

- **Remove Container Cleaning Requirements and Refer to Product Label**
Requirement - The 2009 Federal Container & Containment (C&C) Rule requires that the cleaning instructions be contained on the pesticide label. Current regulations are outdated and need to be updated to reflect the C&C.
 - Proposed changes to the regulations:
 - Direct users to follow cleaning requirements on the pesticide label

- **Update Container Disposal Requirements**
Requirement - The C&C rule requires that container disposal must be defined on the label.
 - Proposed changes to the regulations:
 - Update container disposal requirements to refer to product label.
 - Follow applicable solid waste, hazardous waste, and recycling rules and regulations.

- **Update Commercial Lawn Application Contracts and Visual Notification Requirements**
Concern - The law regarding commercial lawn contracts was revised and the current regulations do not reflect those revisions.
 - Proposed changes to the regulations:
 - Contracts.
 - Clarify contents of contracts versus what needs to be supplied prior to the application.
 - Update to be consistent with program policy, statute, and current electronic business practices.

Concern – Date and Time may not be provided on all Visual Notification Markers

 - Proposed changes to the regulations:
 - Visual notification markers.
 - Require the date and time of application on all markers.

Concern – Posting of visual notification marker distances and frequency may not reflect the intent of the law.

 - Proposed changes to the regulations:
 - Reduce the Number of visual notification markers, or Reconfigure the posting requirements

Concern – Pesticide applicator or business/agency information not currently required on visual notification marker.

 - Proposed changes to the regulations:
 - Require applicator or business/agency name and phone number on visual notification markers.

- **Update Label Notification Requirements**
Concern – All businesses, other than those providing commercial lawn applications, are not allowed to provide amended labels to meet notification requirements.
 - Proposed changes to the regulations:
 - Replace the term “amended label” with the term “abridged label.”
 - Allow the use of abridged labels for all applications rather than just for commercial lawn applications.

Concern – There are currently no regulations for community-wide pesticide application notification.

 - Proposed changes to the regulations:
 - Incorporate community-wide notification requirements regarding adulticiding and larviciding activities as required in current procedures.

- **Revise Direct Supervision Requirements**
Concern – Ensure on-site direct supervision and communication requirements are adequate to provide oversight of the application.
 - Proposed changes to the regulations:
 - Establish minimum standards for immediate voice communication.
 - Revise requirements for on-site and off-site direct supervision.
 - Require apprentice to have training documentation in their possession during pesticide application by the apprentice.

- **Incorporate The WPS**
Concern – Current regulations do not address the 2015 revisions to the federal Worker Protection Standard.
 - Proposed changes to the regulations:
 - Incorporate into regulations.

- **Update Private Applicator Record Requirements**
Concern – Private applicator recordkeeping does not fully describe the application of a pesticide.
 - Proposed changes to the regulations:
 - Update recordkeeping requirements to fully describe the application of a pesticide and meet requirements of the WPS when applicable.

- **Clarify Anti-Siphon Device**
Concern – The policy on anti-siphon device to protect water supplies from pesticides during filling is not currently in the regulation.
 - Proposed changes to the regulations:
 - Amend requirements for anti-siphon device.
 - Define “water source.”

- **Allow Access to Application Records for Apprentices and Technicians**
Concern – Apprentices and technicians can encounter difficulties in obtaining proof of their application experience for the Department’s eligibility requirements.
 - Proposed changes to the regulations:
 - Upon request by the department, employers must provide records of pesticide applications done by technicians and apprentices for the duration of regulatory retention requirement.

CONTACT INFORMATION

Pesticide Use Regulations

New York State Department of Environmental Conservation

Bureau of Pesticides Management

625 Broadway

Albany, New York 12233-7254

P: (518) 402-8788 | pestregs@dec.ny.gov

www.dec.ny.gov

MINIMUM RISK PESTICIDE PRODUCTS



Department of
Environmental
Conservation

January 2019 Stakeholder Meeting

The Department requests stakeholder input on a proposal to require registration of Minimum Risk Pesticide Products in New York State.

Concerns:

- Minimum Risk Pesticide products specifically exempted for registration by EPA in 1996.
 - No central EPA oversight has led to confusion and non-compliant products.
 - Unfair to registrants of EPA registered products.
 - Products are still considered pesticides.
- Most states require registration.
 - Different label and registration requirements.
 - Confusing and cumbersome to registrants that want to comply.
- NYS does not register products but all other pesticide use and recordkeeping requirements apply.
 - Confusion regarding NYS requirements.
 - Users and potential users in the state are unsure of product compliance with EPA exemption criteria.
 - Commercial/professional applicators are hesitant to use Minimum Risk products due to uncertainty of compliance with exemption criteria.
 - Staff spend a lot of time reviewing labels for compliance.
- Fraudulent products pose a risk to public health and the environment.
 - Consumer protection concerns regarding unrealistic product claims.
 - Inappropriate and ineffective products labeled for control of pests of significant public health importance (for example mosquitoes, ticks and bed bugs).

Proposed changes to require the registration of Minimum Risk Pesticide products in New York

- Registration would:
 - Provide oversight of products in the state.
 - Mitigate confusion and clarify requirements.
 - Ensure compliance with exemption criteria.
 - Ensure products are labeled with proper label statements and use directions.
 - Provide a database of compliant products.
 - Provide an online copy of NYS acceptable label.
 - Increase confidence in compliance.
 - Increase use of Minimum Risk Pesticide products.
- Registration would clarify that certain products should not be used.
 - Protect public health by ensuring public health products not registered for use.
 - Protect NYS water resources by ensuring products not labeled for aquatic use.
- Regulations in-line with other states and guidance developed by Association of American Pesticide Control Officials (AAPCO) 25(b) Workgroup. AAPCO is an organization of pesticide regulatory officials from states, U.S. territories, federal agencies and Canadian provinces who administer and enforce pesticide laws and regulations.

The following is from the AAPCO website (<https://aapco.org/2015/07/02/fifra-25b-workgroup>):

AAPCO 25(b) Workgroup Minimum Risk Pesticide Product Label Guidance

The following list is label guidance put together by the AAPCO 25(b) Workgroup to help companies comply with state regulations. This list is for guidance purposes and does not guarantee that your product will be accepted in all states.

25(b) Pesticide Product Labeling Expectations:

1. Products must comply with the 6 conditions outlined by EPA.
 - a. Condition 1 – Active Ingredients
 - i. The product's active ingredients must only be those listed in 40 CFR 152.25(f)(1).
 - b. Condition 2 – Inert Ingredients
 - i. The product's inert ingredients must only be those listed in 40 CFR 152.25(f)(2) and 40 CFR 180.950(a), (b), (c), and (e).
 - c. Condition 3 – Ingredients Listed on Label
 - i. All ingredients in a 25(b) product must be listed by label display name on the label.
 - d. Condition 4 – Health-Related Claims
 - i. The label cannot state or imply that the product can or will control or reduce organisms that pose a threat to human health, or insects or rodents carrying specific diseases.
 - e. Condition 5 – Company Name & Contact Information
 - i. The name of the producer or the company for whom the product was produced and the company's contact information, which includes a street address or PO Box, must be displayed prominently on the product label.
 - f. Condition 6 – Label Statements
 - i. The label cannot include any false or misleading statements, as described in 40 CFR 156.10(a)(5)(i) through (viii).
2. Signal Word and Keep Out of Reach of Children statement are to be located prominently on the front panel of the label.
 - a. The Signal Word on the label should equal what is on the Safety Data Sheet (SDS) as the safety requirements for commercial use products.
3. Both Active and Inert Ingredients are to be listed in column form and total 100%.
4. Inert ingredients are to be listed on the label in order of highest percentage first.
5. NO images of children are acceptable on labels unless the product is intended for use on children or is a swimming pool product.
6. All claims on the manufacturer's website must comply with the 6 conditions outlined by EPA.
7. Labels are to include specific use site locations.
8. Non-toxic claims are not acceptable. The terms "Organic" or "Certified Organic" in reference to 25(b) products are unacceptable.
 - a. The use of the USDA Organic logo is not acceptable on any labeling.
 - b. Individual ingredients in a 25(b) product may be listed as "grown organically". Proper paperwork may be required to substantiate this claim.
 - c. The use of the term "organic" is acceptable when used in connection with one of the following statements: "For Use in Organic Production", "For Use in Organic Gardening", "For Use on Organic Turf" and "OMRI Listed".

9. "Natural" claims are not allowed if the product includes synthetic chemicals and those derived synthetically.
 - a. Ingredients such as, but not limited to, sodium lauryl sulfate, isopropyl myristate, isopropyl alcohol, malic acid, potassium sorbate, citric acid, sodium benzoate, benzoic acid and xanthan gum are synthetic chemicals and are therefore not considered natural.
10. Claims such as "Safe" or "Safe around children and pets" are acceptable only when accompanied by the qualifier "...when used as directed".
11. Data may be required to substantiate any claim that appears on the label or labeling.

This list is to serve as guidance only. For specific registration requirements please contact the individual state department responsible for pesticide registration.

CONTACT INFORMATION

Minimum Risk Pesticide Product Regulations

New York State Department of Environmental Conservation

Bureau of Pesticides Management

625 Broadway

Albany, New York 12233-7254

P: (518) 402-8788 | pestregs@dec.ny.gov

www.dec.ny.gov

AQUATIC PESTICIDES

January 2019 Stakeholder Meeting



Department of
Environmental
Conservation

Aquatic Parts 327, 328 and 329 will be revised and combined. The Department requests stakeholder input on the following proposals:

- **Incorporate amendments to Article 15 of the Environmental Conservation Law**

Concern – Current regulations are outdated and do not reflect the 1990 amendments to the relevant portions of Article 15 of the Environmental Conservation Law.

- Permit required for application of a pesticide to surface waters of the State
- Distinction between application of “pesticides” and “chemicals” made
 - Application of “chemicals” handled by our Division of Water
- Eliminated references to specific pests
- Affirmed Department’s aquatic pesticide application permit authority
- Proposed changes to the regulations:
 - Combine all aquatic regulations (Parts 327, 328 and 329) into one Part
 - Streamline and eliminate discrepancies between Parts
 - Remove references in regulations to specific pests
 - Incorporate the statutory permit jurisdiction over the application of pesticides for the control of all pests in surface waters
 - Clarify which pesticide application practices constitute “the direct application of pesticides to or in surface waters”
 - Specify current permit exemptions
 - One acre or less in size which has no outlet to surface water
 - Copper sulfate use by Water Supply Agencies

- **Incorporate existing aquatic permit administrative practices**

Concern – Current Department aquatic permit administrative practices and policies are not reflected in the regulations.

- Proposed changes to the regulations:
 - Update regulation to reflect current accepted practices
 - Update the process of notifying riparian owners
 - Regulatory definition of persons “likely to be adversely affected”

- **Remove lists of authorized chemicals and specifications**

Concern – The lists of chemicals and specifications contained in the regulations are outdated.

- Proposed changes to the regulations:
 - Update regulations to remove specific references
 - Remove the lists of outdated authorized pesticides and use restrictions
 - Refer to the existing New York State registered pesticide label as the primary source for determining pesticide use and restriction requirements
 - Maintain some restrictions?
 - NYS DOH has concerns regarding people swimming in waters immediately after application and prior to adequate mixing of pesticide

CONTACT INFORMATION

Aquatic Pesticide Regulations

New York State Department of Environmental Conservation

Bureau of Pesticides Management

625 Broadway

Albany, New York 12233-7254

P: (518) 402-8788 | AQpestregs@dec.ny.gov

www.dec.ny.gov