§ 33-0101. Definitions.

1. "Active ingredient" means:

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

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

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

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

2. "Adulterated" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

3. "Affected area" means the area defined in a petition for the protection of a grape growing area.

4. "Agency" means any state agency; municipal corporation; public authority; college, as that term is defined in the education law; railroad, as that term is defined in the railroad law; or telegraph, telephone, telegraph and telephone, pipeline, gas, electric, or gas and electric corporation as those terms are defined in the transportation corporations law, which applies pesticides.

5. "Agricultural commodity" means any plant or part thereof, or animal, or animal product, produced by a person (including farmers,

ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters or other comparable persons) primarily for sale, consumption, propagation or other use by man or animals.

6. "Aircraft" means any contrivance now known, or hereafter invented, used or designed for navigation of, or flight in, the air.

7. "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

8. "Application of pesticide" means any application of pesticides by aircraft or ground equipment.

9. "Business registration" means the requirement of each person or business providing services of commercial application of pesticides, either entirely or as part of the business, to register with the department.

10. "Certified applicator" means any individual who is certified to use or supervise the use of any pesticide in any category of use covered by his certification.

11. "Commercial application" means any application of any pesticide except as defined in private or residential application of pesticides.

12. "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

13. "Degradation" means the decomposition of a compound by stages, exhibiting well-defined intermediate products.

14. "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

15. "Development" means natural and normal growth before harvest.

16. "Experimental use permit" means a permit issued to an applicant for the use of a limited amount of a pesticide not registered pursuant to this article to accumulate data necessary to apply to register the pesticide.

17. "Fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeast, and bacteria, except those on or in living man or other animals.

18. "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

19. "General use pesticide" means a pesticide which does not meet the state criteria for a restricted pesticide as established under authority of section 33-0303 of this article.

20. "Grape grower" means a producer of grapes for profit.

21. "Grape vineyard" means lands upon which grapevines are maintained and harvested for profit.

22. "Ground equipment" means any machine or device (other than aircraft) for use on land or water, designed for, or adaptable to use in applying pesticide as spray, dust, aerosol, fog, or in any other form.

23. "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

24. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice, except those on or in living man. This term shall also

include hematodes.

25. "Inert ingredient" means an ingredient which is not an active ingredient.

26. "Ingredient statement" means either:

a. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; and

b. If the pesticide contains arsenic in any form, a statement of the percentage of total and water soluble arsenic, each calculated as elemental arsenic.

27. "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever, except those on or in living man.

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

29. "Labeling" means all labels and other written, printed, or graphic matter:

a. Upon the pesticide or any of its containers or wrappers;

b. Accompanying the pesticide at any time;

c. To which reference is made on the label or in literature accompanying the pesticide, except when accurate, non-misleading reference is made to current official publications of the United States Department of Agriculture or Interior, the United States Public Health Service, state agricultural experiment stations, state colleges of agriculture, or other similar federal institutions or official agencies

of this state or other states authorized by law to conduct research in the field of pesticides.

30. "Major source of agricultural income" means that the producers of grapes within the affected area obtain at least ten percent of their gross income as a group in any five year period from the production of grapes.

31. "Metabolite" means any of the various organic compounds produced by metabolism.

32. "Misbranded" shall apply to any pesticide:

a. If its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

b. If it is an imitation of or is offered for sale under the name of another pesticide; or if its labeling bears any reference to registration under this article;

c. If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;

d. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to health and the environment;

e. If the label is not visible and readable on the outside of the marketing package which is presented or displayed under customary conditions of purchase;

f. If any word, statement, or other information required by or under the authority of this article to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and

in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

g. If in the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticide; or

h. If in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticide; provided, that physical or physiological effects on plants or parts thereof shall not be deemed injurious, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

i. If its labeling in any other way fails to conform to the labeling requirements of the Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended.

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

34. "Pest" means (1) any insect, rodent, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism (except viruses, bacteria or other micro-organisms on or in living man or other living animals) which the commissioner declares to be a pest.

35. "Pesticide" means:

a. Any substance or mixture or substances intended for preventing, destroying, repelling, or mitigating any pest; and

b. Any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

36. "Pesticide business" means any person providing commercial application of pesticides for hire.

37. "Plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or their produce, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

38. "Private application" means any application of any pesticide for the purpose of producing an agricultural commodity

a. on property owned or rented by the applicator or the applicator's employer, or

b. if applied without compensation other than the barter of personal services between producers of agricultural commodities, on property owned or rented by a party to such a barter transaction.

39. "Proximity" means a radial distance of two miles from the site of damage to grape vineyards.

40. "Registrant" means the person registering any pesticide pursuant to the provisions of this article.

41. "Residential application" shall mean the application of general use pesticides by ground equipment on property owned or leased by the applicator, excluding any establishment selling or processing food and any residential structure other than the specific dwelling unit in which the applicator resides.

42. "Restricted use pesticide" means a pesticide, as defined in this

article and determined as provided in section 33-0303:

a. Which (1) either (a) persists in the environment, or (b) accumulates as either the pesticide per se, a pesticide metabolite, or a pesticide degradation product in plant or animal tissue or product, and is not excreted or eliminated within a reasonable period of time, and which may be transferred to other forms of life; and (2) which by virtue of such persistence or accumulation creates a present or future risk of harmful effects on any organism other than the target organisms; or

b. Which the commissioner finds is so hazardous to man or other forms of life that restrictions on its sale, purchase, use, or possession are in the public interest.

43. "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animals which the commissioner shall declare to be a pest.

44. "Target organisms" means those organisms which the pesticide is intended to inhibit or destroy pursuant to its registered labeled usage.

45. "Weed" means any plant which grows where not wanted.

46. "Commercial lawn application" means the application of pesticide to ground, trees, or shrubs on public or private outdoor property. For the purposes of this article the following shall not be considered commercial lawn application:

a. the application of pesticide for the purpose of producing an agricultural commodity;

b. residential application of pesticides;

c. the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;

d. the application of pesticides by or on behalf of agencies except that agencies shall be subject to visual notification requirements pursuant to section 33-1003 where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; and

e. the application of pesticides on golf courses or turf farms.

47. "Major change in labeling" shall mean any new label or labeling or any amended label or labeling for a pesticide product which contains an active ingredient previously registered and which (a) results in a major change in the use pattern for the active ingredient; (b) changes the classification of the active ingredient or the product to general use or restricted use; increases the application rate; changes the percent concentration of an active ingredient other than an increase due to changes in methods of analysis; adds a previously-registered active ingredient or deletes any active ingredient; or (c) any other change which significantly increases the potential exposure of any non-target organism or which increases the potential for a significant impact to humans, property or the environment.

48. "Residential lawn application" means the application of general use pesticides to ground, trees or shrubs on property owned by or leased to the individual making such application. For the purposes of this article the following shall not be considered residential lawn application:

a. The application of pesticides for the purpose of producing an agricultural commodity;

b. The application of pesticides around or near the foundation of a building for the purpose of indoor pest control;

c. The application of pesticides by or on behalf of agencies except that agencies shall be subject to visual notification requirements pursuant to section 33-1003 of this article where such application is within one hundred feet of a dwelling, multiple dwelling, public

building or public park; and

d. The application of pesticides on golf courses or turf farms.

49. "Abutting property" shall mean any property which has any boundary or boundary point in common with the property on which the pesticide is to be applied.