§ 33-1004. Lawn applications; certain municipalities.

1. Notwithstanding any other provision of law to the contrary, any county not contained entirely within a city, and any city with a population of one million or more, may, after public hearing, adopt a local law comprised of the following provisions in their entirety and without exception including all applicable definitions as provided in this article:

a. All retail establishments that sell general use pesticides for commercial or residential lawn application shall display a sign meeting standards, established by the commissioner pursuant to subdivision one of section 33-1005 of this article, in a conspicuous place, and such sign shall be placed as close as possible to the place where such pesticides are displayed.

b. (i) At least forty-eight hours prior to any commercial lawn application of a pesticide, the person or business making such application shall supply written notice, as defined in subdivision three of section 33-1005 of this article to:

A. occupants of all dwellings, as defined in paragraph d of subdivision five of section 33-0905 of this article, on abutting property with a boundary that is within one hundred fifty feet of the site of such application; and to owners, owners' agents, or other persons in a position of authority for all other types of premises, as defined in paragraph d of subdivision five of section 33-0905 of this article, that are on abutting property with a boundary that is within one hundred fifty feet of the site of such application. Owners or owners' agents of multiple family dwellings shall supply such written notice to the occupants of such multiple family dwellings and for all other types of premises, owners, owners' agents or other persons in a position of authority shall post such written notice in a manner specified by the commissioner; and

B. owners, owners' agents or other persons in positions of authority for multiple family dwellings, the property of which is the site of such

application. Owners, or owners' agents of multiple family dwellings shall supply such written notice to the occupants of such multiple family dwellings in a manner specified by the commissioner.

(ii) The prior notification provisions of this paragraph shall not apply to the following:

A. the application of anti-microbial pesticides and anti-microbial products as defined by FIFRA in 7 U.S.C. Section 136 (mm) and 136 q (h) (2);

B. the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging and biting insects, including venomous spiders, bees, wasps and hornets. This section shall not exempt from notification the use of any fogger product or aerosol product that discharges to a wide area;

C. the use of non-volatile insect or rodent bait in a tamper resistant container;

D. the application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under 40 CFR Part 152.25;

E. the application of a pesticide which the United States Environmental Protection Agency has determined satisfies its reduced risk criteria, including a biopesticide;

F. the use of boric acid and disodium octaborate tetrahydrate;

G. the use of horticultural soap and oils that do not contain synthetic pesticides or synergists;

H. the application of a granular pesticide, where granular pesticide means any ground applied solid pesticide that is not a dust or powder;

I. the application of a pesticide by direct injection into a plant or

the ground;

J. the spot application of a pesticide, where spot application means the application of pesticide in a manually pressurized or non-pressurized container of thirty-two fluid ounces or less to an area of ground less than nine square feet;

K. the application of a pesticide to the ground or turf of any cemetery; and

L. an emergency application of a pesticide when necessary to protect against an imminent threat to human health, provided, however, that prior to any such emergency application, the person providing such application shall make a good faith effort to supply the written notice required pursuant to this title. Upon making an emergency application, the person making such application shall notify the commissioner of health, using a form developed by such commissioner for such purposes that shall include minimally the name of the person making such application, the pesticide business registration number or certified applicator number of the person making such application, the location of such application, the date of such application, the product name and United States Environmental Protection Agency registration number of the pesticide applied and the reason for such application.

c. (i) All persons performing residential lawn applications treating an area more than one hundred square feet shall affix markers to be placed within or along the perimeter of the area where pesticides will be applied. Markers are to be placed so as to be clearly visible to persons immediately outside the perimeter of such property. Markers shall be posted at least twelve inches above the ground and shall be at least four inches by five inches in size. Such markers shall be in both the English and Spanish languages, and any other languages if the commissioner deems it necessary pursuant to rules and regulations.

(ii) The markers required pursuant to this paragraph shall be in place on the day during which the pesticide is being applied and shall instruct persons not to enter the property and not to remove the signs for a period of at least twenty-four hours. Such instruction shall be

printed boldly in letters at least three-eighths of an inch in height.

2. Any county not contained entirely within a city or any city with a population of one million or more that adopts a local law pursuant to the provisions of this section, shall, in addition to any authority otherwise conferred in this chapter, have concurrent authority to enforce such local law administratively, provided however that all sanctions, which shall be assessed after providing a hearing or opportunity to be heard, shall be as specified in section 71-2907 of this chapter and shall be payable to and deposited with the enforcing municipality.

2-a. Within twenty days after the adoption of a local law pursuant to this section, the clerk or other officer designated by the legislative body shall forward one certified copy thereof to the commissioner and one to the attorney general.

2-b. Any local law adopted pursuant to this section shall take effect on the first day of January after it shall have been adopted.

3. The commissioner of health shall review any emergency form submitted pursuant to this section to ensure that the circumstance did warrant such emergency application. Such forms shall be kept on file at the department of health for three years from the date of application and shall be made available to any person upon request.