

ARTICLE 33

PESTICIDES

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TITLE 1

DEFINITIONS

Section 33-0101. Definitions.

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§ 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.

§ 33-0103. Exemptions.

1. The provisions of subdivisions 1 through 5 inclusive of section 33-0303 and titles 5, 7, 11, 13 and 15 of this article shall not apply

to:

a. Any carrier while lawfully engaged in transporting a pesticide within this state, if such carrier shall, upon request, permit the commissioner or his designated agent to copy all records showing the transactions in and movement of the articles;

b. The manufacturer or shipper of a pesticide for experimental use only:

(1) By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides which has a valid experimental permit issued by the commissioner, or

(2) By others having a valid experimental permit issued by the commissioner if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only--Not to be sold," together with the manufacturer's name and address. However, if such a written permit has been obtained from the commissioner, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit.

2. No article shall be deemed in violation of this article when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all of the provisions of this article shall apply.

3. Notwithstanding any other provision of this article, registration is not required in the case of a pesticide shipped from one plant within this state to another plant within this state operated by the same person.

TITLE 3

GENERAL PROVISIONS

Section 33-0301. Declaration of policy and purposes.

33-0303. Powers and duties of the commissioner and the department.

33-0304. Fees.

33-0305. Severability.

§ 33-0301. Declaration of policy and purposes.

The purpose of this article is to regulate the registration, commercial use, purchase and custom application of pesticides. Pesticides, properly used for the control of insects, fungi, weeds, and nematodes, and as defoliants, desiccants, and plant regulators and for related purposes, are valuable, important and necessary to the welfare, health, economic well-being and productive and industrial capabilities of the people of this state. However, such materials, if improperly used, may injure health, property and wildlife. It is hereby declared to be a matter of legislative determination that the regulation of the registration, commercial use, purchase and custom application of pesticides is needed in the public interest and that in the exercise of the police power all persons be required to register or obtain permits before engaging in such activities.

§ 33-0303. Powers and duties of the commissioner and the department.

1. Jurisdiction in all matters pertaining to the distribution, sale, use and transportation of pesticides, is by this article vested exclusively in the commissioner.

2. All authority vested in the commissioner by this article may be executed with like force and effect by employees of the department designated by the commissioner; however, all hearings held under this article except those held under the provisions of title 9 shall be conducted by the commissioner or by a person designated by him for that purpose, and any decision rendered after any such hearing shall be made by the commissioner.

3. The commissioner is authorized, after a hearing:

a. To declare as a pest any form of plant or animal life or virus which is injurious to plants, men, domestic animals, articles, or substances;

b. To determine whether pesticides are highly toxic to man, and to promulgate a list of such pesticides;

c. To determine standards of coloring or discoloring for pesticides, and to subject pesticides to the requirements of paragraph d of subdivision 1 of section 33-1301;

d. To promulgate a list of restricted use pesticides and the usages of such pesticides that may be permitted subject to whatever conditions or limitations which the commissioner deems appropriate to fully protect the public interest; provided, however, that no hearing shall be required on individual additions to such list unless requested sixty days after notice has been provided in the environmental notice bulletin as prescribed in section 3-0306 of such law, as added by chapter seven hundred fourteen of the laws of nineteen hundred seventy-five, by the applicant or an interested party; and

e. To adopt, promulgate and issue such rules and regulations as he may deem necessary to carry out and give full force and effect to the provisions of this article. However, rules and regulations regarding business registration and certification may be adopted only after a public hearing. Such rules and regulations may prescribe methods to be used in the application of pesticides, including the time, place, manner and method of application and equipment used, and may restrict or prohibit use of materials in designated areas during specified periods of time, and shall encompass all reasonable factors which he deems necessary to prevent damage or injury to health, property and wildlife. Rules and regulations shall be filed and open for public inspection at the principal office of the department and shall be filed with the Secretary of State. The commissioner shall promulgate a regulation authorizing the use of alternative containers for pesticides by pesticide users.

4. In order to avoid confusion endangering the public health, or the life or health of any other non-target organisms, resulting from diverse requirements, particularly as to labeling and coloring of pesticides, and to avoid increased costs to the people of this state due to the necessity of complying with diverse requirements in the manufacture and sale of pesticides, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to pesticides. To this end the commissioner is authorized, after due public hearing, to adopt by regulation such regulations, applicable to and in conformity with the primary standards established by this article, as have been or may be prescribed with respect to pesticides by departments or agencies of the United States government.

5. The commissioner may require the submission of the complete formula of any pesticide whenever he deems it necessary in the administration of this article. The commissioner, of his own motion or upon complaint, may cause an examination to be made to determine whether any pesticide complies with the requirements of this article. If it shall appear from such examination that a pesticide fails to comply with the provisions of this article, the commissioner shall cause notice to be given to the offending person in the manner provided in section 71-2903, and the proceedings shall be as provided in such article provided that pesticides may be seized and confiscated as provided in title 15 of this article 33.

6. The commissioner may cooperate with any other agency of the state or its subdivisions or with any agency of any other state or of the federal government for the purpose of carrying out the provisions of this article and of securing uniformity of regulations.

7. The commissioner, in consultation with the commissioner of education and the commissioner of health, shall develop guidance on pesticide alternatives to facilitate compliance with section four hundred nine-k of the education law and three hundred ninety-g of the social services law.

§ 33-0304. Fees.

All fees collected pursuant to this article shall be deposited into the environmental conservation special revenue fund to the credit of the environmental regulatory account; provided, however, that the first five million dollars collected pursuant to this article shall be deposited into the environmental protection fund established pursuant to section ninety-two-s of the state finance law.

§ 33-0305. Severability.

If any provision of this article is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, by a court of competent jurisdiction, the constitutionality of the remainder of the article, and the applicability thereof to other persons and circumstances shall not be affected.

TITLE 5

TESTING OF PESTICIDE SAMPLES

Section 33-0501. Testing of pesticide samples.

§ 33-0501. Testing of pesticide samples.

1. The commissioner shall take and seal samples of pesticides in duplicate in the presence of at least one witness and shall, tender, and, if accepted, deliver to the person in charge of the pesticide one of such samples.

2. The department shall examine, analyze, or test, or cause to be examined, analyzed or tested the pesticide samples taken under the provisions of this article.

3. At least every two years the department shall make public the

results of examinations, analyses, trials, and tests of any sample or samples so procured, together with such additional information as circumstances advise. These published results shall be the property of the state of New York and shall not be used for advertising or regulatory purposes by any person or agency, government or otherwise without the commissioner's permission.

TITLE 7

REGISTRATION OF PESTICIDES

Section 33-0701. Scope of registration.

33-0703. Application for registration.

33-0704. Review of applications to register pesticides.

33-0705. Fee for registration.

33-0707. Disclosure of pesticide formulas.

33-0709. Requirements for registration.

33-0711. Procedure when registration is denied.

33-0713. Cancellation of registration.

33-0714. Water quality monitoring for pesticides.

33-0715. Advisory committees.

33-0717. Public hearing regarding registration.

33-0719. Suspension of pesticide registration.

33-0721. Judicial review.

33-0723. Experimental use permits.

33-0725. Approved agricultural uses.

§ 33-0701. Scope of registration.

Every pesticide which is used, distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered every two years with the office of the commissioner; provided that any pesticide imported into this state, which is registered under the provisions of any federal act providing for the registration of pesticides may, in the discretion of the commissioner, be exempted from registration under this article, when

sold or distributed in the unbroken immediate container in which it was originally shipped.

§ 33-0703. Application for registration.

The applicant shall file with the commissioner a statement including:

1. 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;
2. The name of the pesticide;
3. A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it including directions for use;
4. If requested by the commissioner a full description of the tests made and their results upon which the claims are based. In the case of registration of a pesticide which has been registered for the previous year, a statement shall be required only with respect to information which is different from that furnished when the pesticide was last registered; and
5. For restricted use pesticides, if requested by the commissioner a Spanish or other language translation of the label including directions for use.

§ 33-0704. Review of applications to register pesticides.

1. For registration applications subject to review pursuant to subdivisions two through five of this section, an application for pesticide registration shall be determined by the commissioner to be complete or incomplete within sixty days of receipt of an application for registration. If the commissioner does not issue a determination of completeness or incompleteness within sixty days of receipt of an

application for registration, the application shall be deemed complete. Upon reaching a determination of completeness or incompleteness, the commissioner shall send written notice to the applicant. If the application is determined to be incomplete, the commissioner shall include a statement of the reasons for which the application was determined to be incomplete. The resubmission of the application or the submission of additional information in response to a request for additional information shall commence a new sixty calendar day period for department review of the additional information for purposes of determining completeness.

2. The commissioner shall issue or deny registration of a pesticide which contains an active ingredient not previously registered by the commissioner or which contains an active ingredient previously registered for which a major change in labeling is proposed within one hundred fifty days of a determination that such application is complete. If registration of such pesticide is not granted or denied within such period, the applicant may submit to the commissioner, in the form prescribed by the commissioner, a request to grant or deny the registration. If the registration is not granted or denied within thirty days following the receipt of such a request, the registration shall be deemed granted. Any denial of registration shall specify the grounds for denial.

3. The commissioner shall issue or deny registration of a pesticide to meet a special local need within sixty days of a determination that such application is complete. If registration of such pesticide is not granted or denied within such period, the applicant may submit to the commissioner, in the form prescribed by the commissioner, a request to grant or deny the registration. If the registration is not granted or denied within ten business days following receipt of such a request, the registration shall be deemed granted. Any denial of registration shall specify the grounds for denial.

4. The commissioner shall issue or deny registration of a pesticide which contains an active ingredient previously registered and which does not propose a major change in labeling within ninety days of a

determination that such application is complete. If registration of such pesticide is not granted or denied within such period, the applicant may submit to the commissioner, in the form prescribed by the commissioner, a request to grant or deny the registration. If the registration is not granted or denied within thirty days following the receipt of such a request, the registration shall be deemed granted. Any denial of registration shall specify the grounds for denial.

5. The commissioner shall grant or deny registration of amended labeling of a pesticide product previously registered, other than a major change in labeling, within thirty days following a determination that the application to register the amended labeling is complete. If registration of such amended labeling is not granted or denied within thirty days of a determination that the application is complete, the applicant may submit, in the form prescribed by the commissioner, a request to grant or deny registration of the amended labeling. If registration of the amended labeling is not granted or denied within thirty days following receipt of such a request, the registration shall be deemed granted. Any denial shall specify the grounds for denial.

6. At any time during the review of an application to register a pesticide the commissioner may request reasonable additional information from the applicant with regard to any matter contained in the application when such additional information is necessary for the commissioner to make a decision on the registration application. Such request shall not extend any time period within which a registration decision must be made.

7. A request that the commissioner apply for an emergency exemption from a federal act providing for the registration of pesticides for a use of a pesticide for which no registration has been issued under such federal act shall be filed with the commissioner at least one hundred five days prior to the date on which such use is proposed to commence. Within thirty days of receipt of such a request, the commissioner shall determine whether the materials submitted with the request are adequate to support an application for an emergency exemption, and shall so inform the person submitting the request. If a request is determined to

be adequate to support an application for an emergency exemption, an application shall be filed by the commissioner at least sixty days prior to the date upon which such use is proposed to commence.

8. Any time period specified in this section may be extended with the consent of the applicant.

9. The commissioner shall promulgate rules and regulations necessary and appropriate to carry out the purposes of this title, which shall include a definition of a complete application to register a pesticide. Regulations defining a complete application to register a pesticide shall be promulgated not later than April 1, 1993.

§ 33-0705. Fee for registration.

The applicant for registration shall pay a fee as follows:

a. Six hundred dollars for each pesticide proposed to be registered, provided that the applicant has submitted to the department proof in the form of a federal income tax return for the previous year showing gross annual sales, for federal income tax purposes, of three million five hundred thousand dollars or less; and

b. For all others, six hundred twenty dollars for each pesticide proposed to be registered.

§ 33-0707. Disclosure of pesticide formulas.

The commissioner, whenever he deems it necessary in the administration of subdivisions 1 through 5 inclusive of section 33-0303 and titles 5, 7, 11, 13 and 15 of this article, may require the submission of the complete formula of any pesticide. Notwithstanding the provisions of this article, information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any federal or state department

or agency consulted, or at a public hearing, or in findings of fact issued by the commissioner.

§ 33-0709. Requirements for registration.

If it appears to the commissioner that the composition of the pesticide is such as to warrant the proposed claims for it, and if the pesticide and its labeling and other material required to be submitted comply with the requirements of this article, he shall register the pesticide.

§ 33-0711. Procedure when registration is denied.

If the commissioner shall decide that the pesticide does not warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this article, he shall notify the applicant for registration of the manner in which the pesticide, labeling, or other material required to be submitted fail to comply with this article so as to afford the registrant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant for registration does not make the corrections, the commissioner shall refuse to register the article, and shall notify the applicant of his action and the reasons for his refusal. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with section 33-0717.

§ 33-0713. Cancellation of registration.

1. The commissioner, in accordance with the procedures specified in this article may cancel the registration of a pesticide whenever it does not appear that the article or its labeling or other material required

to be submitted complies with the provisions of this article.

2. Whenever the commissioner determines that registration of a pesticide should be canceled, he shall notify the registrant of his action and the reasons therefor.

3. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (a) makes the necessary corrections; (b) files a petition requesting that the matter be referred to an advisory committee; or (c) files objections and requests a public hearing.

§ 33-0714. Water quality monitoring for pesticides.

The department, in coordination with the United States Geological Survey National Water Quality Assessment Program, the New York State Water Resources Institute, and other parties, shall conduct a water quality monitoring program to provide an adequate understanding of the health and environmental impacts of pesticide use in the state. The department shall utilize this program, as it deems necessary, in: making pesticide registration decisions; reviewing suspensions and cancellations of pesticide registrations in the state; and assessing the status, trends, and health impacts of any pesticide contamination of ground and surface waters on Long Island and throughout the state.

§ 33-0715. Advisory committees.

1. The commissioner on his own motion, may at any time refer matters concerning registration of pesticides or the suspension or cancellation of such registration, to an advisory committee. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the department and shall include one or more representatives from the state college of agriculture. The committee shall not have more than seven members. Advisory committee members shall not receive a salary or other

compensation, but shall be reimbursed for their necessary traveling and subsistence expenses while serving away from their places of residence. All costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the commissioner without a petition. The commissioner shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee.

2. Whenever the applicant or registrant requests an advisory committee hearing or the commissioner determines that a matter should be referred to an advisory committee, the commissioner shall submit the application for registration of the article and all relevant data before him to the committee forthwith. The petitioner, as well as representatives of the department shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days, the committee shall, after independent study of the data submitted by the commissioner and all other pertinent information available to it, submit a report and recommendation to the commissioner as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him the commissioner shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant of his decision. The applicant for registration, or registrant, may file objections and request a public hearing within sixty days from the date of the commissioner's order made after receiving the report and recommendations of the advisory committee.

§ 33-0717. Public hearing regarding registration.

In the event a hearing is requested, the commissioner shall, after due notice, hold a public hearing for the purpose of receiving evidence relevant and material to the issues raised by the objections. Any report, recommendations, underlying data, and reasons certified to the

commissioner by an advisory committee shall be made a part of the record of the hearing, if relevant and material. Upon request of the commissioner, petitioner, or hearing officer, the advisory committee shall designate one of its members to appear and testify at the hearing with respect to its report and recommendations. However, any other member of the advisory committee may also appear and testify at the hearing. As soon as practicable after completion of the hearing, the commissioner shall evaluate the data and reports before him, act upon the objections and issue an order granting, denying, or canceling the registration. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the commissioner by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the commissioner may consult with any federal agency or any other state department or agency.

§ 33-0719. Suspension of pesticide registration.

Notwithstanding any other provision of this article, the commissioner may, by order, suspend the registration of a pesticide immediately when he finds that such action is necessary to prevent an imminent hazard to the public or any other non-target organism. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this article.

§ 33-0721. Judicial review.

Final orders of the commissioner under this title shall be subject to review under article 78 of the Civil Practice Law and Rules instituted within thirty days after receipt by the applicant for registration or registrant of the commissioner's order.

§ 33-0723. Experimental use permits.

1. The commissioner is hereby authorized to apply to the United States environmental protection agency for certification pursuant to section five of the Federal Insecticide, Fungicide and Rodenticide Act of 1972, as amended, to issue experimental use permits, and to establish by regulation any requirements as are necessary to qualify for such certification.

2. After certification by the administrator of the United States environmental protection agency to issue experimental use permits, the commissioner is hereby authorized to issue such permits as shall be required for the shipment, delivery, or use of a pesticide product which is to be tested to determine the scope of limitations of its usefulness and the effect of its use on human life and the environment. Such permits may be issued for products for use only in experimental programs under the supervision of qualified persons and broad scale testing under normal conditions of use. The commissioner may require such information and data concerning the product and the proposed testing program as is deemed necessary to make determinations on the merits of the pesticides being tested.

3. The commissioner is authorized to exempt from the requirement for experimental use permits substances or mixtures of substances in early research stages such as those being put through laboratory or greenhouse tests or limited scale field trials or other tests for the purpose of determining pesticide value and from which the user does not expect to receive any benefit in pest control.

§ 33-0725. Approved agricultural uses.

A pesticide shall be used in accordance with its labeling. Unless the labeling specifically prohibits such use, a pesticide registered for use in New York state may be used for agricultural purposes only in a dosage, concentration or frequency less than that specified on the labeling.

TITLE 9

PERMITS AND CERTIFICATION

Section 33-0901. Commercial permits.

33-0903. Purchase permits.

33-0905. Pesticide applicator certification.

33-0907. Pesticide business and agency registration.

33-0909. Denial or revocation of certification or registration.

33-0911. Certification and registration fees.

§ 33-0901. Commercial permits.

1. A commercial permit is required for the distribution, sale, offer for sale, purchase for the purpose of re-sale or possession for the purpose of re-sale of a restricted use pesticide.

2. Any person desiring such a permit shall file an application containing such information required by the commissioner and in a form prescribed by the commissioner. The commissioner shall examine the application and shall issue or refuse to issue the permit requested therein. The commissioner shall impose whatever restrictions or conditions on the permit he deems appropriate in order to fully protect the public interest. Such a permit shall not be valid for more than two years as determined by the commissioner. A separate permit is required for each location in the state, and a fee for each location in the state of six hundred dollars is required.

3. Upon the sale by a commercial permit holder of a restricted use pesticide to a purchase permit holder, the commercial permit holder shall cancel the permit in a manner to be prescribed by the commissioner.

4. The holder of a commercial permit may purchase restricted use pesticides for re-sale without being required to obtain and present a purchase permit, as provided for in section 33-0903.

5. The holder of a commercial permit must maintain and make available to the commissioner or his agents, for at least two years, accurate and detailed records accounting for all restricted use pesticides acquired by him and disposed of by him, including, but not limited to dates, names and addresses of all suppliers and the quantities acquired from each, and the names, addresses, permit numbers or certification identification card numbers of all purchasers, and the quantities purchased by each.

6. The reasons for the denial of an application or revocation of a commercial permit may include, but not be limited to, the commissioner being satisfied of one or more of the following:

a. That any statement in the application or upon which the permit was issued is or was false or misleading;

b. That the applicant or permit holder does not have adequate facilities for the storage and distribution of restricted use pesticides;

c. That the applicant or permit holder has engaged in fraudulent business practices relating to the sale and distribution of pesticides;

d. That the applicant or permit holder has failed to comply with any provision of subdivisions 1 through 5 inclusive of section 33-0303 and titles 5, 7, 11, 13 and 15 of this article or rules and regulations of the department made pursuant thereto; or

e. That the applicant or permit holder has failed to demonstrate that he has sufficient knowledge and experience concerning the proper use and application of pesticides.

7. A formal hearing shall not be required and the commissioner's decision in denying or revoking a permit shall be final unless the applicant or permit holder institutes a review within the time and in the manner prescribed by article 78 of the Civil Practice Law and Rules.

§ 33-0903. Purchase permits.

1. A purchase permit or certification identification card is required for the purchase, possession or use of a restricted use pesticide.

2. Any person desiring such a permit shall file an application containing such information required by the commissioner and in a form prescribed by the commissioner. The commissioner shall examine the application and shall issue or refuse to issue the permit requested therein. The commissioner shall not issue a permit to so purchase, possess or use a particular pesticide if there is a reasonably less dangerous alternative available capable of performing the task required. The commissioner shall impose whatever restrictions or conditions on the permit he deems appropriate in order to fully protect the public interest.

3. Upon the purchase by a purchase permit holder of a restricted use pesticide he shall present his purchase permit and have it cancelled by the commercial permit holder selling the pesticide in a manner to be prescribed by the commissioner.

4. The reasons for the denial of an application or revocation of a permit may include, but not be limited to, the commissioner being satisfied of one or more of the following:

a. That any statement in the application or upon which the permit was issued, is or was false or misleading;

b. That the applicant or permit holder failed to justify his need for the quantity and types of restricted use pesticides requested;

c. That the applicant or permit holder stored, applied, used or disposed of any pesticide contrary to the registered labeled usage or contrary to the conditions specified in his permit;

d. That the applicant or permit holder has failed to comply with any provisions of this article or rules and regulations of the department made pursuant thereto; or

e. That the applicant or permit holder has failed to demonstrate that he has sufficient knowledge and experience concerning the proper use, application and disposal of pesticides.

5. A formal hearing shall not be required and the commissioner's decision in denying or revoking a permit shall be final unless the applicant or permit holder institutes a review within the time and in the manner prescribed by article 78 of the Civil Practice Law and Rules.

6. The commissioner is authorized to exempt holders of a pesticide applicator certification from the requirement of obtaining a purchase permit as provided for herein. Such exemption shall apply only to those restricted use pesticides designated by the commissioner.

§ 33-0905. Pesticide applicator certification.

1. Any person who engages in the commercial or private application of pesticides or the sale of restricted use pesticides shall be certified by the commissioner except as provided in subdivision two of this section. No certification shall be valid unless the certified person also holds a valid identification card issued by the commissioner.

2. The provisions of this article relating to registration and certification shall not apply to:

a. residential application of pesticides as defined in this article;
or

b. private application of a general use pesticide as defined in this article.

2-a. The commissioner may, pursuant to paragraph e of subdivision

three of section 33-0303 of this article, adopt regulations on the use of pesticides including the appropriate method and setting for the use of pesticides classified by the United States environmental protection agency as an exempt material under 40 CFR part 152.25, often called minimum risk pesticides, which are exempt from the requirements of the Federal Insecticide, Fungicide and Rodenticide Act. Such regulations shall encompass all factors necessary to prevent damage or injury to health, property and wildlife.

3. a. Application for pesticide applicator certification shall be made to the commissioner. The application shall be on a form prescribed by the commissioner and shall be accompanied by the fee or fees provided in section 33-0911.

b. An applicant for certification shall satisfy the commissioner as to his knowledge and experience concerning the proper use and application of pesticides and pesticide application equipment through examination prior to initial certification. Recertification shall be by training, workbook, or examination as required by the commissioner.

c. Upon certification, the commissioner shall certify the applicant for the appropriate category of certification and shall issue a certification identification card to the applicant. The certification may restrict the applicant to the use of a certain type or types of equipment or materials.

d. Except as provided in paragraph e of this subdivision, pesticide applicator certifications shall be valid for three years after which every applicator shall recertify according to the requirements then in effect. Certification identification cards shall be valid for three years.

e. Private applicator certifications shall be valid for five years after which every such applicator shall recertify according to the requirements then in effect. Private applicator certification identification cards shall be valid for five years.

g. The commissioner is authorized to provide all examinations, training materials, applications, and any other forms or written materials necessary for a private and/or commercial applicator certification in Spanish for applicants whose primary language is Spanish and for other languages if the commissioner deems it necessary. The commissioner may require applicants for registration of pesticides to make available pesticide label information and instructions in Spanish and other languages, when necessary, for applicators certified in Spanish or other languages.

4. Certified pesticide applicators shall maintain such records and shall furnish such reports concerning the application of pesticides as the commissioner shall require. All records required to be kept under this section shall be available for inspection by the commissioner.

5. a. Every certified applicator shall, prior to the application of a pesticide within or on the premises of a dwelling, supply the occupants therein with a copy of the information, including any warnings, contained on the label of the pesticide to be applied. Such information shall be supplied in either a written, digital or electronic format which shall be determined by the occupants of such dwelling, provided however that the certified applicator must also have a written copy of such information in his/her possession.

b. Except as provided in paragraph c of this subdivision, every certified applicator shall, prior to the application of a pesticide within or on the premises of a multiple dwelling, building, or structure other than a dwelling supply the owner or his agent, with a copy of the information, including all warnings, contained on the label of the pesticide to be applied. Such information shall be supplied in either a written, digital or electronic format which shall be determined by the owner or his or her agent, provided however that the certified applicator must also have a written copy of such information in his or her possession. Such owner or agent shall make available upon request at reasonable times such information in written or electronic form if available to the occupants or residents of such multiple dwelling, building, or structure.

c. In the case where an occupant of a multiple dwelling unit retains a certified applicator to apply pesticides within such unit, such certified applicator shall, prior to the application of a pesticide, supply any information, including all warnings, contained on the label of the pesticides to the occupants.

d. For the purposes of this subdivision:

(i) A "dwelling" is any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place for one or two families;

(ii) A "multiple dwelling" shall mean any dwelling which is to be occupied by or is occupied as the residence or home of three or more families living independently of each other;

(iii) A "multiple dwelling unit" shall mean that portion of a multiple dwelling occupied by one or more persons as the residence or home of such persons; and

(iv) "Premises" shall mean land and improvements or appurtenances or any part thereof.

§ 33-0907. Pesticide business and agency registration.

1. Any pesticide business or agency as defined in this article shall register with the commissioner.

2. Applications for pesticide business or agency registration shall be made to the commissioner. The application shall be on a form prescribed by the commissioner and shall provide such information as the commissioner shall require.

3. An applicant for pesticide business or agency registration shall satisfy standards, as determined by the commissioner to be appropriate, with respect to knowledge and experience concerning the proper use and application of pesticides and pesticide equipment.

4. Business or agency registration shall be valid for three years.

§ 33-0909. Denial or revocation of certification or registration.

1. The commissioner, after due notice and opportunity of hearing to an applicant, certified applicator, or registered pesticide business or agency, may deny an application or revoke a certificate or registration upon a determination that:

a. any statement in the application or upon which the certificate or registration was issued is or was false or misleading;

b. the applicant or certified applicator has been convicted of a felony;

c. the applicant, certified applicator, or registered business or agency applied or used any pesticide contrary to the registered label usage;

d. the applicant, certified applicator, or registered business or agency has engaged in fraudulent business practices in the application of pesticides;

e. the applicant, certified applicator, or registered business or agency has failed to comply with any provision of this article or rules and regulations of the department made pursuant thereto; or

f. the applicant or certified applicator has failed to demonstrate that he has sufficient knowledge and experience concerning the proper use and application of pesticides.

2. The commissioner's determination to refuse or revoke certification or registration shall be final unless the aggrieved party institutes a proceeding under article seventy-eight of the civil practice law and rules within thirty days of service on him by personal service or by certified mail of the commissioner's order.

§ 33-0911. Certification and registration fees.

1. Every applicant for pesticide applicator certification shall pay an examination fee of one hundred dollars for each examination.

2. Fees for pesticide applicator certification shall be four hundred fifty dollars for commercial pesticide applicator certification in one individual category, one hundred fifty dollars for each additional category and one hundred fifty dollars for each additional sub-category chosen. For private applicators a fee of twenty-five dollars for the initial certified private applicator and five dollars for subsequent applicators on the same farm or business shall be charged at the time of initial certification, renewal of certification or recertification.

3. Pesticide businesses shall pay a registration fee of nine hundred dollars. When the applicant regularly maintains or operates more than one business address a fee may be required for each of the applicant's business addresses in the state. Any agency which is a state agency, municipal corporation, public authority, or college shall be exempt from any fee for registration.

TITLE 9-A

**SPECIAL PERMITS AND CERTIFICATION FOR COMMERCIAL
APPLICATION OF AQUATIC ANTIFOULING PAINTS**

Section 33-0920. Definitions.

33-0921. Aquatic antifouling paint applicator certification.

33-0922. Aquatic antifouling paint business registration.

33-0923. Denial or revocation of certification or registration.

33-0924. Certification and registration fees.

33-0925. Sanctions.

§ 33-0920. Definitions.

For the purposes of this title:

1. "Aquatic antifouling paint application business" shall mean a business that commercially applies aquatic antifouling paints.

2. "Aquatic antifouling paints" are pesticide products used on vessel hulls, boat bottoms, structures and other marine surfaces to inhibit the growth of aquatic organisms.

3. "Application of aquatic antifouling paint" shall mean the commercial application of aquatic antifouling paints.

4. "Aquatic antifouling paint applicator" shall be a person certified by the department pursuant to section 33-0921 of this title.

§ 33-0921. Aquatic antifouling paint applicator certification.

1. Notwithstanding any other provision of law or regulation pursuant to this title, a person who is certified by the commissioner as an aquatic antifouling paint applicator may engage in the commercial application of aquatic antifouling paint.

2. Application for aquatic antifouling paint applicator certification shall be made to the commissioner. The application shall be on a form prescribed by the commissioner and shall be accompanied by the fee or fees provided in section 33-0911 of this article.

3. An applicant for aquatic antifouling paint applicator certification shall successfully complete a comprehensive twenty-hour training course approved by the department including eight hours of category-specific training which includes topics related to the safe and proper use, handling, storage and disposal of aquatic antifouling paints and/or satisfy the commissioner as to the applicant's knowledge and experience concerning the proper use and application of aquatic antifouling paint and application equipment through examination prior to initial certification. The commissioner may consider appropriate experience of the applicant as specified in regulations when determining eligibility

for examination.

4. Aquatic antifouling paint applicator certification shall be valid for three years after which every applicator shall recertify. Recertification shall require no more than five hours of course work by training, workbook, or examination as required by the commissioner.

5. No certification shall be valid unless the certified person also holds a valid identification card issued by the commissioner. Certification identification cards shall be valid for three years.

6. Certified aquatic antifouling paint applicators shall maintain such records and shall furnish such reports concerning the application of aquatic antifouling paints as the commissioner shall require. All records required to be kept under this section shall be available for inspection by the commissioner.

§ 33-0922. Aquatic antifouling paint business registration.

1. Notwithstanding any other provision of law or regulation pursuant to this title, an aquatic antifouling paint application business as defined in this title shall register with the commissioner.

2. Applications for aquatic antifouling paint application business registration shall be made to the commissioner and applicants shall provide such information as the commissioner shall require. The application shall be on a form prescribed by the commissioner and shall be accompanied by the fee or fees provided in section 33-0911 of this article.

3. An applicant for aquatic antifouling paint application business shall satisfy standards, as determined by the commissioner to be appropriate, with respect to knowledge and experience concerning the proper use and application of aquatic antifouling paint application and equipment. In addition to any other standards determined by the commissioner to be appropriate, an applicant shall: (a) employ at least

one person who is a certified commercial pesticide applicator or technician certified in the application of aquatic antifouling paint or an aquatic antifouling paint applicator at each location required to be registered; or (b) have entered into a contract with another registered business that employs a person who is a certified commercial pesticide applicator or technician certified in the application of aquatic antifouling paint or an aquatic antifouling paint applicator, pursuant to which contract such registered business has agreed to apply aquatic antifouling paint at each such location for such applicant.

4. Business registration shall be valid for three years.

5. When engaged in the commercial application of aquatic antifouling paints, an aquatic antifouling paint application business shall ensure that such aquatic antifouling paints are only applied by an employee who is a certified commercial pesticide applicator or technician certified in the application of aquatic antifouling paint or an aquatic antifouling paint applicator, or a person who is a certified commercial pesticide applicator or technician certified in the application of aquatic antifouling paint or an aquatic antifouling paint applicator employed by another registered business with which such business has contracted to apply aquatic antifouling paints; provided, however, that until such time as authorization for pesticide application by pesticide apprentices is repealed, aquatic antifouling paint registered as a general use pesticide may be applied by a commercial pesticide apprentice who is at least seventeen years of age and employed by such business (a) working under the direct supervision of a certified commercial pesticide applicator, or (b) working under the supervision of a certified pesticide technician qualified in aquatic antifouling paints, if such application is otherwise done in compliance with the rules and regulations of the department, and who, during the handling and application of such paint, utilizes appropriate safety equipment including but not limited to a respirator, eye protection and skin protection.

6. Such aquatic antifouling paint application business shall, for a period of five years, maintain for inspection by the department an

annual report listing the names and certification numbers of all employees or contractors engaged in the application of aquatic antifouling paints on behalf of such business during the prior twelve months.

§ 33-0923. Denial or revocation of certification or registration.

The commissioner, after due notice and opportunity of hearing to an applicant, certified applicator, or registered pesticide business or agency, may deny an application or revoke a certificate or registration pursuant to section 33-0909 of this article.

§ 33-0924. Certification and registration fees.

All fees established by the commissioner for certification and registration pursuant to this title shall be the same as those established by section 33-0911 of this article.

§ 33-0925. Sanctions.

Notwithstanding any other provision of law or regulation pursuant to this title and/or any provision of this article as it relates to the application of aquatic antifouling paints, any person who violates any provision of this title or any rule, regulation or order issued thereunder shall be liable to the people of this state for a civil penalty of up to one thousand dollars for a first violation to be assessed by the commissioner after a hearing or opportunity to be heard. In determining the amount of the penalty, the commissioner shall take into account whether the violation posed an immediate threat to the environment or the health and safety of the public. Any subsequent violation of this title and/or any provision of this article as it relates to the application of aquatic antifouling paints would be subject to the appropriate sanctions pursuant to sections 71-2907 and 71-2911 of this chapter.

TITLE 10

SPECIAL REQUIREMENTS FOR COMMERCIAL AND RESIDENTIAL LAWN APPLICATIONS

Section 33-1001. Requirements and restrictions.

33-1003. Visual notification.

33-1004. Lawn applications; certain municipalities.

33-1005. Rules and regulations.

33-1005*2. Commissioner's regulations.

§ 33-1001. Requirements and restrictions.

1. Prior to any commercial lawn application the applicator shall enter into a written contract with the owner of the property or his or her agent specifying the approximate date or dates of application, number of applications, and total cost for the service to be provided.

2. Prior to any commercial lawn application the applicator shall supply the property owner or his or her agent with a copy of:

a. a list of substances to be applied including brand names and generic names of active ingredients;

b. any warnings that appear on the label of pesticides to be applied that are pertinent to the protection of humans, animals or the environment; and

c. the company name, address, telephone number, business registration number and applicator certification identification card number.

Such information shall be supplied in either a written, digital or electronic format which shall be determined by the owner or his or her agent provided however that the applicator must also have a written copy of such information in his or her possession.

3. In the event that application on the date or dates specified

becomes infeasible, the person who is to provide such application shall give the owner or his agent oral or written notice of the proposed alternate date or dates, and shall receive acceptance of such alternate date or dates from the owner or his agent prior to initiating commercial lawn application.

4. Persons providing commercial lawn applications shall maintain copies of all contracts required pursuant to subdivision one of this section.

§ 33-1003. Visual notification.

1. All persons providing commercial lawn application 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. Such markers shall be posted at least twelve inches above the ground and shall be at least four inches by five inches in size.

2. The markers required pursuant to this section 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.

§ 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.

*** § 33-1005. Rules and regulations.**

The commissioner shall have the power to promulgate the rules and regulations necessary and appropriate to carry out the purposes of this title.

* NB There are 2 § 33-1005's

*** § 33-1005. Commissioner's regulations.**

For purposes of implementing section 33-1004 of this article in any county not contained entirely within a city or any city with a population of one million or more that has adopted a local law pursuant to such section:

1. The commissioner shall promulgate rules and regulations establishing uniform standards for a consumer pesticide use information sign which shall be placed in retail establishments that sell general use pesticides for commercial or residential lawn application. This sign shall be in both the English and Spanish languages, and any other

languages if the commissioner deems it necessary pursuant to rules and regulations, and shall contain the following information:

a. a warning notice directing consumers to follow directions on labels;

b. a provision to inform the customer of the posting requirements set forth in paragraph c of subdivision one of section 33-1004 of this article; and

c. a recommendation that the customer notify neighbors prior to the application of pesticides so that such neighbors may take precautions to avoid pesticide exposure.

2. The commissioner shall prepare and publish, in consultation with the commissioner of health, educational materials, in both the English and Spanish languages and any other languages if the commissioner deems it necessary, explaining the requirements of paragraphs b and c of subdivision one of section 33-1004 of this article and section three hundred ninety-c of the social services law and the human and environmental health effects of lawn care pesticides.

3. a. The commissioner shall promulgate rules and regulations specifying the following: the content and form of the written notice required in paragraph b of subdivision one of section 33-1004 of this article, with the content consisting minimally of the following:

(i) the address of the premises where application is to be done;

(ii) the name and telephone number and pesticide business registration number or certified applicator number of the person providing the application;

(iii) the specific date of each pesticide application and two alternative dates to the proposed date of application when, due to weather conditions, the pesticide application on the proposed date is precluded;

(iv) the product name or names and the United States Environmental Protection Agency registration number or numbers of the pesticide or pesticides to be applied;

(v) a prominent statement that reads: "This notice is to inform you of a pending pesticide application to: 1. a neighboring property; or 2. this premise. You may wish to take precautions to minimize pesticide exposure to yourself, family members, pets or family possessions. Further information about the product or products being applied, including any warnings that appear on the labels of such pesticide or pesticides that are pertinent to the protection of humans, animals or the environment, can be obtained by calling the National Pesticides Telecommunications Network at 1-800-858-7378 or the New York State Department of Health Center for Environmental Health Info line at 1-800-458-1158".

b. The commissioner shall review and revise as necessary the phone numbers required to appear in notices pursuant to this section and pursuant to section four hundred nine-h of the education law and section three hundred ninety-c of the social services law. Notwithstanding the provisions of the state administrative procedure act, such phone numbers shall be established as a rule by publication in the environmental notice bulletin.

c. The written notice required by paragraph b of subdivision one of section 33-1004 of this article shall be in both the English and Spanish languages, and any other languages if the commissioner deems it necessary pursuant to rules and regulations.

4. The commissioner shall promulgate rules and regulations specifying: the manner in which persons providing commercial lawn application shall supply written notice as required under paragraph b of subdivision one of section 33-1004 of this article including, but not limited to, mailing, or leaving with a responsible adult or in a conspicuous location on the premises or abutting property; the manner in which the owner or owner's agent of multiple family dwellings covered under paragraph b of subdivision one of section 33-1004 of this article shall supply such written notice to the occupants of such multiple family dwellings; and for all other premises covered under paragraph b of subdivision one of section 33-1004 of this article, the manner in which the owner, owner's agent or other person in a position of authority

shall supply such written notice. Such rules and regulations shall specify a manner in which persons providing commercial lawn applications may provide an option to occupants of dwellings to decline further notices.

5. The commissioner is hereby authorized to promulgate rules and regulations, not inconsistent with any other provisions of law, specifying procedures for the department's investigation and processing of alleged violations of paragraph c of subdivision one of section 33-1004 of this article that pertain to persons performing residential lawn applications. Such uniform procedures may require complaints to be in the form of a sworn statement containing the facts upon which an alleged violation is based and may provide that the department is not required to perform any testing or sampling in relation to the investigation of any such alleged violations.

* NB There are 2 § 33-1005's

TITLE 11

PROTECTION OF GRAPE GROWING AREAS

Section 33-1101. Petition for protection of a grape growing area.

33-1103. Public hearing.

33-1105. Orders.

§ 33-1101. Petition for protection of a grape growing area.

1. The requirements for a petition for protection of a grape growing area are as follows:

a. The petition must be in a form prescribed by the commissioner;

b. The petition must be signed by ten or more grape growers in the same or contiguous towns in the state;

c. The petition must allege that the use of 2,4-D (2,4 Dichlorophenoxyacetic acid), 2,4-5-T (Trichlorophenoxyacetic acid) or

MCP (2 Methyl, 4 Chlorophenoxyacetic acid) in proximity to grape vineyards or crops of grapes described in the petition has proved harmful to the development of grapevines or the grape crop in the affected area in the same or any prior year; and

d. The petition must request that the use of such chemical substances be prohibited or restricted within the affected area.

2. In counting the required number of petitioners, joint tenants or tenants by the entireties shall be counted as one signer.

3. The commissioner shall ascertain whether at least ten of the signers of the petition are grape growers and owners of grape vineyards within the affected area.

§ 33-1103. Public hearing.

1. If the commissioner determines that the petition is properly filed, he shall hold a public hearing.

2. The commissioner shall give at least ten days' notice of the time and place at which the hearing will be held, as follows:

a. By posting in at least five of the most public places within the affected area; and

b. By notice by mail to each of the petitioners and to each manufacturer, supplier and dealer furnishing the chemical substances complained of within the affected area, so far as is known to the commissioner, after diligent inquiry.

3. Proof of notice shall be evidenced by affidavit of the commissioner appended to the minutes of the hearing at which the petition is considered.

§ 33-1105. Orders.

1. If the commissioner finds, from testimony adduced, that:

a. There has been actual damage to grapevines or grape crops within the affected area; and

b. Such damage was caused by the use of the chemical substance complained of in the petition, and by that cause alone; and

c. Such use was upon lands within the affected area or in proximity to the affected area, or upon the damaged crop itself; and

d. The commercial production of grapes within the affected area constitutes a major source of agricultural income within the affected area; then the commissioner may issue his order prohibiting or restricting the use of 2,4-D (2,4-D Dichlorophenoxyacetic acid), 2,4-5-T (Trichlorophenoxyacetic acid) or MCP (2 Methyl, 4 Chlorophenoxyacetic acid) within or in proximity to the affected area for a period of time to be specified in the order. The affected area may be altered by description in the order of the commissioner, if the commissioner finds that such alteration should be made to effectuate the purposes of the petition. All restrictions upon the use of 2,4-D (2,4-Dichlorophenoxyacetic acid), 2,4-5-T (Trichlorophenoxyacetic acid) or MCP (2 Methyl, 4 Chlorophenoxyacetic acid) within or in proximity to the affected area shall be set forth in the order with particularity.

2. The order shall continue in effect from year to year unless modified or rescinded by the commissioner. Not later than February 15 of each year, the commissioner shall give notice of the order by publication in a newspaper of general circulation in the area affected. The notice shall state the terms of the order in general language and that the order will continue in effect for the period of time specified in the order, unless a petition for modification or rescission of the order, signed by ten or more grape growers or fifty or more persons not grape growers in the affected area is filed with the commissioner on or before March 1 of such year.

3. If a request for modification or rescission is received, the commissioner shall hold a hearing after giving notice as provided in section 33-1103. After the hearing, the commissioner shall make such findings as the evidence adduced justifies and may continue, modify, or rescind the order. If the commissioner modifies or rescinds the order, he shall give notice of his action as provided in subdivision 4 of this section.

4. All orders shall be effected upon posting the same prominently in at least five of the most public places within the affected area. They shall also be published in a newspaper having general circulation in the areas affected but such publication shall not be a condition precedent to their effectiveness.

TITLE 12

PESTICIDE SALES AND USE DATA BASE AND RECORDKEEPING AND REPORTING

Section 33-1201. Pesticide sales and use computer data base.

33-1203. Access to pesticide information.

33-1205. Recordkeeping and reporting.

33-1207. Recordkeeping and reporting by importers and manufacturers.

§ 33-1201. Pesticide sales and use computer data base.

1. a. The department shall develop a pesticide sales and use computer data base. The data base shall be maintained at the department.

b. Such data base shall consist of all information compiled from reports submitted to the department pursuant to sections 33-1205 and 33-1207 of this title. Such reports shall be entered into and maintained on a computerized data base and shall be updated annually. Information obtained for and contained in the data base shall be accessible by interested parties only to the extent permitted pursuant to the provisions of subdivision two of this section and paragraph a of

subdivision 1 of section 33-1203 of this title.

2. The commissioner shall prepare an annual report summarizing pesticide sales, quantity of pesticides used, category of applicator and region of application. Pesticide data shall be compiled and reported by both EPA registration number and by active ingredient. The commissioner shall not provide the name, address, or any other information which would otherwise identify a commercial or private applicator, or any person who sells or offers for sale restricted use or general use pesticides to a private applicator, or any person who received the services of a commercial applicator. In accordance with article six of the public officers law, proprietary information contained within such record, including price charged per product, shall not be disclosed. The report shall be posted on the department's website annually by December thirty-first and be submitted to the governor, the temporary president of the senate and the speaker of the assembly.

§ 33-1203. Access to pesticide information.

1. a. The commissioner shall, upon written request of an interested party, in printed or electronic form, as requested by such party provide the information on pesticides submitted to the department pursuant to sections 33-1205 and 33-1207 of this title. Such information shall be provided by county or counties, or five-digit zip code or codes as selected by the interested party making the written request. Pesticide data shall be provided by EPA registration number, product name and active ingredient. The commissioner shall not provide the name, address, or any other information which would otherwise identify a commercial or private applicator, or any person who sells or offers for sale restricted use or general use pesticides to a private applicator, or any person who received the services of a commercial applicator. In accordance with article six of the public officers law, proprietary information contained within such record, including price charged per product, shall not be disclosed. The provisions of this paragraph shall not apply to the provision of pesticide data to the commissioner of health, the health research science board and researchers pursuant to

title one-B of article twenty-four of the public health law.

b. The department shall, upon request from the department of health, compile pesticide application information by nine-digit zip code and provide the information to the commissioner of health for researchers entitled to receive information pursuant to paragraph (d) of subdivision one of section twenty-four hundred eleven of the public health law provided, however, if the nine-digit zip code cannot be determined, the information shall be compiled by town or city.

2. The fees for copies of information shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any information.

§ 33-1205. Recordkeeping and reporting.

1. All commercial applicators shall maintain pesticide use records for each pesticide application containing the following:

- a. EPA registration number;
- b. product name;
- c. quantity of each pesticide used;
- d. date applied;
- e. location of application by address (including five-digit zip code).

Such records shall be maintained for a period of not less than three years. All commercial applicators shall file, at least annually, a report or reports containing such information with the department in an electronic format developed or accepted by the department consistent with system file specifications or on scannable forms, if developed by the department, on or before February first for the prior calendar year. All commercial applicators shall also maintain corresponding records of

the dosage rates, methods of application and target organisms for each pesticide application. These records shall be maintained on an annual basis and retained for a period of not less than three years and shall be available for inspection upon request by the department.

2. a. Every person who sells or offers for sale restricted use pesticides to private applicators shall issue a record to the private applicator of each sale of a restricted use pesticide or a general use pesticide used in agricultural crop production to such applicator. Such record of each sale shall include the following:

1. EPA registration number;
2. product name of the pesticide purchased;
3. quantity of the pesticide purchased;
4. date purchased;
5. location of intended application by address (including five-digit zip code) or if address is unavailable by town or city (including five-digit zip code) if the location of intended application differs from the billing address that appears on the record.

Every person who sells or offers for sale restricted use pesticides to private applicators shall file, at least annually, a report or reports containing such information with the department in an electronic format developed or accepted by the department consistent with system file specifications or on scannable forms, if developed by the department, on or before February first for the prior calendar year. The department shall not use the reports filed pursuant to this paragraph for enforcement purposes.

b. All private applicators shall maintain, at a minimum, records of the restricted pesticides purchased, crop treated by such, method of application, and date of application or applications. This information shall be maintained on an annual basis and retained for a minimum of

three years, and shall be available for inspection upon request by the department.

c. A private applicator shall, upon request, within six months, provide site-specific information relating to pesticide applications to any researcher entitled to receive information pursuant to paragraph (d) of subdivision one of section twenty-four hundred eleven of the public health law, provided, however, such request shall not be granted during planting and harvesting unless at a time and in a manner that is mutually convenient.

§ 33-1207. Recordkeeping and reporting by importers and manufacturers.

1. Each person manufacturing or compounding a registered restricted use pesticide in this state, or importing or causing a registered restricted use pesticide to be imported into this state for use, distribution, or storage, shall maintain records of all sales within the state during the preceding year of each restricted use pesticide product which he or she has imported, manufactured or compounded. The record of each restricted use pesticide product shall include:

- a. EPA registration number;
- b. container size; and
- c. number of containers sold to New York purchasers.

2. Such records shall be maintained for a period of not less than three years. All manufacturers and importers shall file an annual report containing such information with the department in an electronic format developed or accepted by the department consistent with system file specifications on or before February first for the prior calendar year.

Section 33-1301. Unlawful acts.

33-1303. Registration not a defense.

§ 33-1301. Unlawful acts.

It shall be unlawful:

1. For any person to distribute, sell, offer for sale or use within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

a. Any pesticide which has not been registered pursuant to the provisions of this article or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; provided that in the discretion of the commissioner a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.

* b. Except as specified in regulation authorizing alternative pesticide containers, any pesticide unless it:

(1) is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing (i) the name and address of the manufacturer, registrant, or person for whom manufactured;

(ii) the name, brand, or trade-mark under which said article is sold; and

(iii) the net weight or measure of the content; subject, however, to such reasonable variations as the commissioner may permit; or

(2) meets the requirements of subparagraph one of this paragraph except that the container has been accidentally damaged during handling prior to sale and the damage has been repaired by such person in

accordance with his or her own specific "minor repair program" approved by the United States environmental protection agency pursuant to its October ninth, two thousand nine pesticide container repair interim policy. A copy of the approved program shall be forwarded to the department within thirty days of approval and shall be kept at the person's place of business and be available for department review upon request.

* NB Effective until July 1, 2028

* b. Except as specified in regulation authorizing alternative pesticide containers, any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:

(1) The name and address of the manufacturer, registrant, or person for whom manufactured;

(2) The name, brand, or trade-mark under which said article is sold; and

(3) The net weight or measure of the content; subject, however, to such reasonable variations as the commissioner may permit.

* NB Effective July 1, 2028

c. Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in section 33-0303, unless the label shall bear, in addition to any other matter required by this article:

(1) The skull and crossbones;

(2) The word "poison" prominently, in red, on a background of distinctly contrasting color; and

(3) A statement of an antidote for the pesticide.

d. The pesticide commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate, unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this article, or any other white powder pesticide which the commissioner, after investigation of and

after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored; provided, that the commissioner may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

e. Any pesticide which is adulterated or misbranded.

2. For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this article or regulations promulgated hereunder, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this article.

3. For any person to use for his own advantage or to reveal, other than to the commissioner or proper officials or employees of the state or to the courts of this state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of this article.

4. For any person to store or dispose of any pesticide, or of any container which holds or has held a pesticide, except in compliance with the rules and regulations of the commissioner.

5. For any person to distribute, sell, offer for sale, purchase for the purpose of re-sale, or possess for the purpose of re-sale any restricted use pesticide without a commercial permit issued by the commissioner.

6. For a commercial permit holder to sell restricted use pesticides except to the holder of a non-cancelled purchase permit or to the holder of a commercial permit or a certified applicator.

7. For any person to purchase or possess, except for the purpose of re-sale, or use any restricted use pesticide without a purchase permit issued by the commissioner or without being a certified applicator.

8. For any person to engage in application of pesticides without a pesticide applicator certificate registration issued by the commissioner, except while working under the direct supervision of a certified applicator.

8-a. For any person or business to engage in the business of applying pesticides unless the business is registered by the commissioner.

9. For any person to use 2,4-D (2,4-Dichlorophenoxyacetic acid), 2,4-5-T (Trichlorophenoxyacetic acid) or MCP (2 Methyl, 4 Chlorophenoxyacetic acid) within or in proximity to an affected area, in violation of an order of the commissioner prohibiting or restricting such use.

10. For any person to remove or dispose of a seized or quarantined pesticide by sale or otherwise without the commissioner's permission.

11. In cities with a population of one million or more, it shall be unlawful to use any pesticide containing the active ingredient 4-aminopyridine, including but not limited to Avitrol.

12. For any state department, agency, public benefit corporation or any pesticide applicator employed thereby as a contractor or subcontractor to apply glyphosate on state property, provided that the application of glyphosate on state property is permitted only for (a) direct application in circumstances when there is no actual or significant threat of direct human exposure and no effective and practicable alternative, and (b) for the following uses, pursuant to regulations promulgated by the department:

- (i) to maintain critical infrastructure;
- (ii) to manage roadside vegetation to ensure public safety;
- (iii) habitat management for the control of invasive species

identified pursuant to title seventeen of article nine of this chapter, pests of significant public health importance, noxious weeds designated by the department as injurious to ecosystem health, and the protection of critical native plant species; and

(iv) for research purposes to develop sustainable alternatives for agricultural and environmental usages, as well as research regarding the environmental motility of glyphosate.

The department shall post information on its website regarding glyphosate usage pursuant to this section, including amount and location, by April first of each year.

13. a. It shall be unlawful for any person to apply or treat outdoor ornamental plants and turf, except for the production of agricultural commodities or structural commercial applications within one foot of a building foundation perimeter to manage structural pests provided that the application is not conducted on any blooming plant, with a pesticide containing:

(1) the active ingredients imidacloprid, thiamethoxam or acetamiprid on or after December thirty-first, two thousand twenty-six;

(2) the active ingredients clothianidin or dinotefuran effective December thirty-first, two thousand twenty-four.

b. (1) The provisions of paragraph a of this subdivision shall not apply where the department, by written order, determines that:

(i) a valid environmental emergency exists;

(ii) the pesticide would be effective in addressing the environmental emergency; and

(iii) no other, less harmful pesticide or pest management practice would be effective in addressing the environmental emergency.

(2) Any such order shall include the basis for the department's determination and specify the approved time period, geographic scope, and purpose of the permitted use of such pesticide. An order issued pursuant to this section shall be valid for a period not to exceed one year.

c. The provisions of this subdivision shall not apply to pesticide

applications by, or under the supervision of, a certified applicator for treatment against invasive species affecting woody plants.

d. For the purposes of this subdivision "environmental emergency" means: an occurrence of any pest which presents a significant risk of harm or injury to the environment, or significant harm, injury, or loss to agricultural crops, including, but not limited to, any exotic or foreign pest.

e. Applicators using a pesticide containing the active ingredients imidacloprid, thiamethoxam, acetamiprid, clothianidin, or dinotefuran pursuant to paragraph b or c of this subdivision must take a department approved neonicotinoid course annually and maintain a record of this course for three years.

§ 33-1303. Registration not a defense.

In no event shall registration of a pesticide, be construed as a defense for the commission of any offense prohibited under subdivisions 1 through 7 of section 33-1301.

TITLE 15

SEIZURE

Section 33-1501. Pesticides which may be seized.

33-1503. Procedure following seizure.

§ 33-1501. Pesticides which may be seized.

1. Any pesticide that is distributed, sold, offered for sale or used within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state may be seized for confiscation or be made the subject of a stop-use order:

- a. If it is adulterated or misbranded, or if it has not been registered as required under this article;
- b. If it fails to bear on its label the information required by this article;
- c. If it is a white powder pesticide and is not colored as required under this article;
- d. If a permit required by this article has not been issued in respect to such pesticide; or
- e. If there is probable cause to believe a pesticide is being used in violation of any provision of this article, title three of article fifteen of this chapter or rules or regulations promulgated pursuant to any such provision.

2. Whenever the commissioner or his duly authorized representative shall find distributed, sold, exposed or offered for sale within this state any pesticide which is adulterated or misbranded as defined in this article, or which fails to bear on its label the information required by this article, or which is not colored or registered as required under this article, or for which a permit has not been issued for its sale, offer for sale, purchase, possession or use as required by this article, he may seize or destroy such pesticide.

3. Whenever the commissioner finds, or has probable cause to believe, that a pesticide is being used in violation of any provision of this article, title three of article fifteen of this chapter, or rules and regulations promulgated pursuant thereto, the commissioner may issue a stop-use order requiring the user of the pesticide immediately to cease using such pesticide and immediately to remove such pesticide to the specified location. Within thirty days of the issuance of a stop-use order, the commissioner shall either rescind the stop-use order or commence a proceeding to seize and destroy such pesticides.

§ 33-1503. Procedure following seizure.

1. Whenever the commissioner finds, or has probable cause to believe, that any pesticide is adulterated or misbranded or improperly labeled, or is not colored within the meaning of this article, or is not registered as required under this article, or for which a permit has not been issued for its sale, offer for sale, purchase, possession or use as required by this article, he may affix to such pesticide a tag or other appropriate marking giving notice that such pesticide is or is suspected of being adulterated or misbranded, or improperly labeled, or not colored, or not registered as required under this article, or for which a permit has not been issued for its sale, offer for sale, purchase, possession or use as required by this article, and has been quarantined, and warning all persons not to remove or dispose of such pesticide, by sale or otherwise, until permission for removal or disposal is given by the commissioner or his duly authorized representative.

2. Before destruction of any pesticide following seizure or quarantine, the commissioner shall give the owner, proprietor or custodian of such pesticide ten days' notice in writing, to be served either personally or by mail, of a hearing for the owner, proprietor, or custodian, to show cause why such pesticide should not be destroyed or otherwise disposed of in accordance with the provisions of law.

3. Following such hearing, the commissioner shall render a decision in writing and filed with the department, and a copy thereof shall be served either personally or by mail on the owner, proprietor, or custodian of such pesticide, but formal findings of fact shall not be required to be made or filed. The decision shall be subject to review under article 78 of the Civil Practice Law and Rules instituted within thirty days after receipt by the owner, proprietor or custodian of such pesticide of a copy of the commissioner's decision.

4. Whenever any pesticide is seized or quarantined as provided in this section, the destruction and disposition thereof, together with any necessary storage, handling or other incidentals between the time of seizure or quarantine and the destruction and disposition thereof, shall

be the responsibility, both financially and otherwise, of the owner, proprietor or custodian of such pesticide; provided, however, that such destruction and disposition shall be carried out only under the direction and immediate supervision of the commissioner or his duly authorized representative.