Colorado Department of Agriculture

Plant Industry Division

Rules and Regulations Pertaining to the Administration and Enforcement of the Pesticide Applicators' Act

8 CCR 1203-2

Part 1. Definition and Construction of Terms.

1.01. As used in these rules, the singular includes the plural, the masculine gender includes the feminine and neuter, and vice versa. All terms used in these rules shall have the meaning set forth for such terms in the Act.

1.02. As used in these rules, unless the context otherwise requires:

(a) "abut" means to join; to be contiguous, as where no other land, road, or street intervenes; "abut" includes two property sites that would otherwise be considered abutting, but for the fact that such sites are separated by an alley. As used herein, "alley" means a passage way within a block set apart for public use, vehicular travel, and local convenience to provide a secondary means of access to the rear or side of abutting lots or buildings.

(b) "category" shall include any sub-category thereof.

(c) "engaged in the business of applying pesticides for hire" means: the evaluation of pest problems; the recommendation of pest controls and evaluation of results; the mixing, loading or application of pesticides; and/or the soliciting, advertising, offering or contracting to do any of the above, in return for money or anything of value, including goods or services. Notwithstanding anything to the contrary in the foregoing, the rendering of consultation services by an individual in evaluating pest problems, recommending pest controls and/or evaluating results, shall not be deemed to constitute the application of pesticides for hire, if said individual is not affiliated with, or soliciting business for, any person or business entity which performs the mixing, loading or application of pesticides.

(d) "in the possession of" means in the physical possession of the applicator or in a location at the site of the application, such as a service vehicle, that is readily accessible to the applicator.

(e) "fumigant" means any substance which by itself or in combination with other substances emits or liberates a gas or gases, fumes or vapors, and which gas or gases, fumes or vapors when liberated and used will destroy vermin, rodents, insects, and other pests, but are usually lethal, poisonous, noxious, or dangerous to human life.

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(f) "pasture" means land which is managed primarily for the production of forage for domestic livestock. Pasture typically receives intensive renovation and/or cultural treatments, such as tillage, fertilization, mowing, irrigation and weed control.

(g) "proof of medical justification" means a statement signed by a physician licensed to practice medicine in Colorado pursuant to Article 36 of title 12, C.R.S. which states

I certify that the individual named above is a patient of mine and should be placed on the list of pesticide sensitive individuals. This individual has a documented sensitivity to certain pesticides and should not be exposed to them because of the reason(s) described below:

(h) "property damage" includes, but is not limited to, injury to domestic animals, livestock and economically important insects.

(i) "structure" means any building, regardless of its design or the type of material used in its construction, whether public or private, vacant or occupied, the foundation thereof, and the adjacent outside areas, and shall also include but shall not be limited to warehouses, trucks, boxcars, boats, airplanes, other vehicles, or the contents thereof, and fumigation vaults.

(j) "use" means any and all aspects of the handling of pesticides from the time a pesticide container is opened until disposal of the pesticide container, including without limitation, the mixing, loading, application, spill control, and disposal of a pesticide or its container.

(k) "to use any pesticide in a manner inconsistent with labeling directions or requirements" includes, but is not limited to, for termiticides only, the use of a termiticide at any concentration less than that stated on the labeling.

(l) "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.

Part 2. The Licensing System.

Subpart A Commercial Applicators

2.1. A person engaged in the business of applying pesticides must be licensed as a commercial applicator under the Act. To be licensed or to renew a license as a commercial applicator, any designated qualified supervisor(s) must be licensed in good standing in the category for which a commercial applicator's license is sought.

2.2. A person not engaged in the business of applying pesticides is not required to be licensed as a commercial applicator under the Act. For example, a person who evaluates and/or recommends pest controls while not engaging in the business of applying pesticides or working for a person who engages in the business of applying pesticides is not required to be licensed under the Act.

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2.3. Each applicant for a license shall submit a signed, complete, accurate, and legible application, on a form provided by the Commissioner, which shall include, at a minimum: the name and address of the business, the name under which the business will operate (the doing business as name), the name of the person who is the primary contact, the address and telephone number of the location where the applicator records are to be kept, the name and identification numbers of all qualified supervisors employed or designated by the business, and any other information required on the form.

2.4. In addition to the form approved by the Commissioner, each applicant for a license or applicant for renewal of a license, shall submit the license fee set by the Commissioner. If the license fee does not accompany the application, the application for license or renewal of a license may be denied.

2.5. Each person applying as a corporation or other entity, shall submit a certificate of good standing from the Secretary of State.

2.5.5. Each individual or sole proprietorship that applies for a license must provide all information and documents required by the Commissioner to verify lawful presence in the United States pursuant to Section 24-76.5-103, C.R.S. Failure to provide all such information and documents in the manner specified by the Commissioner shall be grounds for denial of an application for a license or renewal of an existing license.

2.6. Each applicant shall submit to the Commissioner the name under which the business will operate. If the licensee operates under more than one name, each such name shall be listed with the Commissioner.

2.7. Beginning with license year 1994, the annual license fee for commercial applicators shall be $350.00.

2.8. Each applicant for renewal of a license shall annually submit a signed, complete, accurate, and legible application on a form provided by the Commissioner, which shall include, at a minimum: the name and address of the business, the name of the person who is the primary contact, the address and telephone number of the location where the applicator records are to be kept, the name and identification numbers of all qualified supervisors employed by the business, and any other information required on the form.

2.9. Each applicant for a license shall file evidence of liability insurance on forms provided by the Commissioner.

2.10. Each applicant for renewal of a license in all categories, shall have on file at the time of submission of an application for renewal of a license evidence of liability insurance which is in force at the time of application.

2.11. Each commercial applicator shall have on file with the Commissioner evidence of liability insurance on forms provided by the Commissioner at the time any pesticide application is performed.

2.12. Adequate Supervision:

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a) A licensee must have at least one qualified supervisor for every fifteen (15) technicians, of which no more than eight (8) may be unlicensed technicians. For purposes of the provision, the term “unlicensed technician” means a technician who does not have a certified operator license

b) A responsible qualified supervisor must be available while any technician under their supervision is using a pesticide. For purposes of this provision, the term “available” means able to communicate verbally with the technician and the department and to respond appropriately to any emergency.

2.13. A commercial applicator who conducts such business at two or more business locations shall obtain a license for each location at which it employs one or more permanent employees engaged in the application of pesticides for hire. For purposes of this paragraph, “business locations” means any physical location at or through which the functional operations of business regularly occur, including, but not limited to, financial transactions, arrangement of contracts, or assignment of work, and excluding buildings or locations used solely for storage of equipment or supplies or telephone answering services.

2.14. A commercial applicator may not apply pesticides aerially without an endorsement on its license by the Commissioner permitting such applications. In order to obtain such endorsement, the applicant or licensee shall present evidence that at least one pilot employed or to be employed by said applicant, currently holds a commercial agricultural aircraft operator certificate issued by the Federal Aviation Administration, U.S. Department of Transportation, pursuant to 14 CFR, part 137. If the employment of said pilot or pilots is terminated for any reason, the Licensee shall immediately cease aerial application of pesticides unless and until it is in compliance with this rule.

2.15. A business not engaged in the business of applying pesticides for hire, and not licensed under the Act, may enter into a contract which incidentally requires one or more pesticide applications. Examples of such contracts, but not by way of limitation, are maintenance and paving contracts. If such business hires a licensed commercial applicator to perform the pesticide application as a subcontractor, then the primary contractor need not itself be licensed under the Act. If the primary contractor does not hire a licensed commercial applicator to perform such applications, then the primary contractor must obtain a license prior to entering into the primary contract. The absence of a written provision in the contract which states that the contractor will subcontract with a licensed commercial applicator, to perform the pesticide application(s) called for in the contract, shall be evidence that the contractor itself intends to perform the applications.

2.16. A commercial applicator not licensed in a category (“contractor”) may enter into a contract with a customer to perform pesticide applications in said category if the contractor intends to subcontract with a commercial applicator licensed in said category (“subcontractor”) to perform the pesticide application in that category. In this case, the subcontractor shall be responsible for all aspects of the application. If the contractor hires the subcontractor to perform the pesticide application, then the contractor need not itself be licensed in the category. If the contractor does not hire a subcontractor to perform such applications, then the contractor must obtain a license in said category prior to entering into any contract with a customer for any pesticide application in said category. The absence of a written provision in the contract with the customer which states that the contractor will subcontract with a subcontractor licensed to perform the pesticide

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application(s) called for in the contract, shall be evidence that the contractor itself intends to perform the applications.

2.17. A commercial applicator licensed in a category ("contractor") may enter into a contract with a customer to perform pesticide applications in said category. The contractor may subcontract with another commercial applicator licensed in the same category ("subcontractor") to perform the pesticide application under the primary contract. In this case, both the contractor and subcontractor shall be responsible for all aspects of the application. For example and not by way of limitation: both applicators are required to keep records of the application; both applicators are responsible for any notification required under the act or these rules; and both applicators are responsible for the proper application of any pesticides.

Subpart B Registered Limited Commercial Applicators and Registered Public Applicators

2.18. Any person who in the course of conducting a business only in or on property owned or leased by the person or the person's employer ("limited commercial applicator") is engaged in applying restricted use pesticides, and any agency of the state, any county, city and county, or municipality, or any other local governmental entity or political subdivision ("public applicator") which applies restricted use pesticides shall register with the Commissioner.

2.19. An entity which does not apply restricted use pesticides but otherwise qualifies as a limited commercial applicator or a public applicator may register with the Commissioner.

2.20. A limited commercial applicator or public applicator which exclusively applies general use pesticides is not required to register with the Commissioner unless they have so designated in accordance with § 2.19.

2.21. Any limited commercial applicator or public applicator registered pursuant to the Act and these rules shall be governed by the Act and these rules for all pesticide applications including those involving general use pesticides.

2.22. The limited commercial applicator or public applicator shall designate on its application one or more individuals, who are or will be employed by it in the capacity of qualified supervisor, to take the examination for each category and subcategory for which the registration is sought.

2.23. To be registered as a limited commercial applicator or public applicator, the designated qualified supervisor must be licensed in good standing and must meet all qualifications including, but not limited to, the experience and/or educational qualifications set forth in these rules for each of the categories in which he or she will take the examination. For purposes of this section, the term "good standing" includes but is not limited to, the fact that the qualified supervisor's license has not expired pursuant to § 35-10-116 (1), C.R.S.

2.24. Each applicant for a registration shall submit a signed, complete, accurate, and legible application, on a form provided by the Commissioner, which shall include, at a minimum: the name and address of the applicant, the name of the person who is the primary contact, the address and telephone number of the location where the applicator records are to be kept, the

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name and identification numbers of all qualified supervisors employed by the applicant, and any other information required on the form.

2.25. In addition to the form approved by the Commissioner, each applicant for registration, shall submit the registration fee set by the Commissioner. If the registration fee does not accompany the application, the application for registration may be denied.

2.26. Each person applying as a corporation or other entity, shall submit a certificate of good standing from the Secretary of State.

2.27. The registration required pursuant to the Act shall expire on December 31 of the same year the registration is granted.

2.28. A registered limited commercial applicator or a registered public applicator may not apply pesticides aerially without an endorsement on its registration by the Commissioner permitting such applications. In order to obtain such endorsement, the limited commercial applicator or a public applicator shall present evidence that at least one pilot employed or to be employed by said limited commercial applicator or a public applicator, currently holds a commercial agricultural aircraft operator certificate issued by the Federal Aviation Administration, U.S. Department of Transportation, pursuant to 14 CFR, part 137. If the employment of said pilot or pilots is terminated for any reason, the limited commercial applicator or a public applicator shall immediately cease aerial application of pesticides unless and until it is in compliance with this rule.

2.29. A limited commercial entity or a public entity may designate separate sections, divisions, agencies, or their equivalent to be registered.

2.30. Adequate Supervision:

a) A registered limited commercial applicator or a registered public applicator must have at least one qualified supervisor for every fifteen (15) technicians, of which no more than eight (8) may be unlicensed technicians. For purposes of the provision, the term “unlicensed technician” means a technician who does not have a certified operator license.

b) A responsible qualified supervisor must be available while any technician under their supervision is using a pesticide. For purposes of this provision, the term “available” means able to communicate verbally with the technician and the department and to respond appropriately to any emergency.

2.31. If before the expiration of a registration, a registered limited commercial applicator or registered public applicator wants to withdraw registration, said applicator may withdraw from registration. Notice of withdrawal must be in writing and is not effective until 10 days from receipt by the Commissioner. If before the original expiration of a registration the applicator wants to be registered, the applicator must submit a new application and submit a new registration fee.

Subpart C Qualified supervisors and certified operators

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2.32. A person working for a person who is or should be licensed as a commercial applicator, registered limited commercial applicator, or registered public applicator and who without supervision, evaluates pest problems, or recommends pest controls using pesticides, or uses any pesticide, or sells application services, or supervises others in any of these functions must be licensed as a qualified supervisor.

2.33. A person who applies any restricted use pesticide without the on site supervision of a qualified supervisor must be licensed as a certified operator.

2.34. Each qualified supervisor and certified operator applying for a license or the renewal of a license shall complete and file with the Commissioner an application, prior to the date of expiration of any current license on a form furnished by the Commissioner, and which contains, at a minimum, the following: the applicant's identification number, if any, his or her name, the name, address, telephone number, and license or registration number of his or her employer, if any, and any other information required on the form.

2.35. The Commissioner may require verification of any fact, including but not limited to, any experience or education claimed on any application, and may investigate the truthfulness and accuracy of any and all information submitted by an applicant.

2.36. Upon a showing of exceptional circumstances by an applicant, the Commissioner may waive part of the experience requirements specified in these rules. The Commissioner may accept, with sufficient verification, valid relevant field experience obtained in this state or any other state.

2.37. Each applicant for license as a qualified supervisor or certified operator, shall take and pass a general examination and any examinations required for the category for which the applicant has applied.

2.38. Each individual who applies for a license must provide all information and documents required by the Commissioner to verify lawful presence in the United States pursuant to Section 24-76.5-103, C.R.S. Failure to provide all such information and documents in the manner specified by the Commissioner shall be grounds for denial of an application for a license or renewal of an existing license.

2.39. Except as provided in § 2.45 of these rules, each applicant for a license as a qualified supervisor or certified operator shall pay a fee to be determined by the Commissioner. Said fee must be paid separately from any other fee, including but not limited to, any fee for examination as a qualified supervisor or certified operator or any fee for licensure as a commercial applicator.

2.40. The qualified supervisor(s) employed by a licensee shall be responsible for the complete supervision of all pest control recommendations, soliciting, mixing, loading, and application of pesticides for the licensee.

2.41. The anniversary date of a qualified supervisor's license or certified operator's license shall be the birth date of the licensee.

2.42. Both qualified supervisors and certified operators will be licensed by category and must take and pass both a general exam and a category specific exam.

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2.43. In order for a licensed qualified supervisor or licensed certified operator to become licensed in additional categories, the applicant must take and pass the examination in the new category.

2.44. If a qualified supervisor possesses all of the qualifications for licensure as a qualified supervisor in an additional category for which such person is not licensed, except for the required experience, such person shall be licensed as a certified operator in such additional category without payment of the application fee for the certified operator's license.

2.45. If a licensed qualified supervisor or licensed certified operator applies for licensure in an additional category, said qualified supervisor or certified operator shall not be required to pay an additional application fee for licensure in a new category. The applicant shall be required to pay an examination fee.

2.46. Any category added after the qualified supervisor or certified operator is originally licensed or renewed shall expire on the date of expiration of the original license.

2.47. In order to qualify for renewal of a license, any licensed qualified supervisor or licensed certified operator must either take and pass the general exam and any category specific exams for his category or complete any continuing education required pursuant to part 4 of these rules. Any renewal of a license shall be determined on a category basis. Any license that is not renewed on or before the expiration date of the license may be reinstated within one hundred eighty days after the expiration date upon:

(a) Application and payment of a reinstatement fee as determined by the Commissioner; and

(b) Proof that all renewal requirements have been satisfied as of the expiration date of the license.

2.48. An individual certified or licensed by another jurisdiction as a commercial pesticide applicator may obtain a certified operator license in Colorado without passing any examination, but only for the unexpired term of the certification or license issued by such other jurisdiction. Application for such licensure shall require proof of current certification or licensure in good standing in the other jurisdiction and payment of an application fee pursuant to § 2.39. Any application for licensure pursuant to this section may be denied for any reason other than passage of any exam. If issued, said license shall expire on the expiration date of the certification or license issued by the other jurisdiction. Upon the expiration of the license issued pursuant to this section, the individual may renew the certification or license issued by the other jurisdiction and re-apply to become a certified operator in Colorado as permitted by this § 2.48, or apply for a license in Colorado and satisfy all requirements therefore, including, but not limited to, taking and passing each examination applicable to such licensure.

Subpart D Private Applicators

2.49. Any person who uses or supervises the use of a restricted use pesticide for purposes of producing any agricultural commodity on property owned or leased by the applicator or the applicator's employer or, if the pesticide is applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person must be a licensed private applicator. The holder of a private applicator license is only

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authorized to use restricted pesticides for the purpose of producing an agricultural commodity as defined in Part 1, Rule 1.02(k).

2.50. Each applicant for a private applicator license or renewal of a license shall complete and file with the Commissioner an application on a form furnished by the Commissioner, and which contains, at a minimum, the following: the applicant's identification number, if any, his or her name, address, telephone number, photocopy of their identification, and any other information required on the form. Licenses issued by the Environmental Protection Agency prior to January 1, 2007 cannot be renewed.

2.51. The Commissioner may require verification of any fact, including but not limited to, type of agricultural commodity production claimed on any application, and may investigate the truthfulness and accuracy of any and all information submitted by an applicant.

2.52 Each applicant for a private applicator license shall take and pass an examination.

2.53 Each applicant for a private applicator license shall pay a fee to be determined by the Commissioner. Said fee must be paid separately from any other fee, including but not limited to, any fee for examination as a private applicator.

2.54. A licensed private applicator shall be responsible for the supervision of any unlicensed person working under his or her direction, who mixes, loads, or applies a restricted use pesticide, for purposes of producing any agricultural commodity on property owned or leased by the applicator or the applicator's employer. For the purposes of this section, supervision of any unlicensed person working "under his or her direction" shall mean work performed by an individual acting under the instruction and control of a licensed private applicator, even if the licensed private applicator is not physically present at the work site at the time the work is performed.

2.55. The anniversary date of a private applicator license shall be the birth date of the licensee.

2.56 In order for a licensed private applicator to become licensed as a qualified supervisor or certified operator, the applicant must take and pass both a general exam and a category specific exam and meet any requirements outlined in Part 2, Subpart C of these rules.

2.57 If a licensed private applicator applies for licensure as a qualified supervisor or certified operator, the private applicator shall be required to pay an additional examination fee and application fee for licensure.

2.58. In order to qualify for renewal of a license, a licensed private applicator must either take and pass the private applicator exam or complete any continuing education required pursuant to Part 4 of these rules. A license that is not renewed on or before the expiration date of the license may be reinstated within one hundred eighty days after the expiration date upon:

(a) Application and payment of a reinstatement fee as determined by the Commissioner; and

(b) Proof that all renewal requirements have been satisfied as of the expiration date of the license.

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2.59. An individual certified or licensed by another jurisdiction outside Colorado as a private applicator may obtain a Colorado private applicator license without passing any examination, but only for the unexpired term of the certification or license issued by such other jurisdiction. Application for such licensure shall require proof of current certification or licensure in good standing in the other jurisdiction and payment of an application fee pursuant to § 2.53. Said license shall expire on the expiration date of the certification or license issued by the other jurisdiction. Upon the expiration of the license issued pursuant to this section, the individual may renew the certification or license issued by the other jurisdiction and re-apply to become a private applicator in Colorado as permitted by this § 2.59, or apply for a license in Colorado and satisfy all requirements therefore, including, but not limited to, taking and passing an examination applicable to such licensure.

Subpart E Licensure Actions, Suspension, Denial, Revocation

2.60 Any of the following actions shall constitute grounds for the suspension, restriction, refusal to renew, denial, or revocation of a license or certification, whether alone or in conjunction with violations of any provision of the act or of any other provision of these rules:

(a) The application of pesticides in a negligent or willful manner which creates, either by pesticide residue or by direct damage, a hazard to property, which shall include without limitation, crops, ornamental plants, and animals (including economically important insects).

(b) The application of pesticides in a negligent or willful manner which endangers human health.

(c) The creation of a situation from improper handling of pesticides, including spillage, leakage, vapors or disposal, which constitutes a hazard to the health, welfare or safety of any person, the general public, any animal or animals (including economically important insects), any crops, any ornamental plants, or the environment.

Part 3. Examination.

3.1. The Commissioner, or his or her designate administrator, shall administer a general examination and/or an examination in each category established by these rules. Each examination is for the purpose of licensing as a qualified supervisor, certified operator, or private applicator. An individual may take such examinations for the purpose of obtaining a license.

3.2. Each applicant for examination shall file an application for examination on a form provided by the Commissioner and shall pay a fee to be determined by the Commissioner. Said fee must be paid separately from any other fee, including but not limited to, any fee for application for licensure as a qualified supervisor, certified operator, or private applicator or any fee for licensure as a commercial applicator.

3.3. Each applicant shall be required to obtain the grade designated as passing on each section of the examination (s) under which he or she wishes to qualify. All examinations shall be graded uniformly.

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3.4. Each applicant for examination shall complete an identification form, provided by the Commissioner, for the Commissioner's use in identifying persons who take the examinations. The information on the identification form shall consist of that which is reasonably necessary or appropriate for ensuring the integrity of the examination process, such as the physical description of the applicant.

3.5. Examinations shall be graded without reference to the application or personal identification forms which have been completed by the applicant.

3.6. The Commissioner shall keep an applicant's test results on file for a period of one year from the date of examination. Such results may be used by an applicant for licensing during that period of time. If an applicant fails to complete the licensing process within one year of the examination date, he or she shall be required to take new examinations in all applicable categories in which he or she wishes to be licensed.

3.7. The Commissioner may furnish, for a fee, study guides for the use of persons preparing for the examinations given under the Act. The fees for this material shall be sufficient to cover the cost of printing and postage.

3.8. Examination security provisions:

(a) No applicant or licensee testing in any qualified supervisor or certified operator licensure category shall use any outside information not provided by the Commissioner or his designee while taking a closed book examination, remove any examination question or answer sheets from the room where the examination is given, nor shall any applicant or licensee cause any examination question or answer to be disseminated to any person not employed by the Commissioner by any means whatsoever.

(b) No applicant or licensee testing for a private applicator license, or person proctoring a private applicator test session, shall cause any examination question or answer to be disseminated to any person not employed by the Commissioner by any means whatsoever. No person other than the applicant or licensee may complete the private applicator examination form.

Part 4. Continuing Education Requirements.

Subpart A General Continuing Education Requirements for Qualified Supervisor and Certified Operator

4.1. In order to renew a license without examination, each qualified supervisor and each certified operator must obtain the following credits prior to the expiration of his license:

(a) 2 credits in the subject area of applicable state, federal, and local laws and regulations;

(b) 1 credit in the subject area of pesticides and their families;

(c) 1 credit in the subject area of applicator safety;

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(d) 1 credit in the subject area of public safety;

(e) 1 credit in the subject area of environmental protection;

(f) 1 credit in the subject area of use of pesticides; and

(g) 1 credit for each licensed category in the subject area of pest management except for those categories described in subsection (h) of this § 4.1 below.

(h) 2 credits for each of the following licensed categories: residential/commercial pest control, turf pest control and ornamental pest control.

4.2. In order for a qualified supervisor or a certified operator attending a course to receive relicensing or continuing education credit:

(a) the course must be approved in advance by the Commissioner;

(b) request for approval must be in writing;

(c) requests for approval must be submitted by the sponsors;

(d) requests for approval must be submitted no less than fifteen days prior to the course; and

(e) requests for approval shall include the proposed agenda, the identity of all speakers at pertinent course(s) and a synopsis of the topics to be addressed in each course for which credit is being requested.

4.3. If the Commissioner receives a request for continuing education approval at least sixty days prior to the course date, the Commissioner will notify applicators of the approval for continuing education credits. The Commissioner will not provide notification of such approval if the request for its approval was received less than sixty days prior to the course.

4.4. The list of those attending each approved course shall be sent by the sponsor to the Commissioner no later than 7 days after the conclusion of the course. It is the individual's responsibility to confirm that his or her name appears on the attendance list when he or she attends an approved course.

4.5. A course will be approved for continuing education credit if, in the opinion of the Commissioner, it covers at least one topic from the following subject areas adequately to justify the approval for credit. (Subject areas and subtopics are listed in Subpart C - I of this section.)

Subpart B General Continuing Education Requirements For Private Applicators

4.6. In order to renew a license without examination, each private applicator must obtain the following credits prior to the expiration of his or her license:

(a) 2 credits in the subject area of applicable state, federal and local laws and regulations;

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(b) 1 credit in the subject area of pesticides and their families;

(c) 1 credit in the subject area of applicator safety;

(d) 1 credit in the subject area of public safety;

(e) 1 credit in the subject area of environmental protection; and

(f) 1 credit in the subject area of use of pesticides.

4.7. In order for a private applicator attending a course to receive relicensing or continuing education credit:

(a) the course must be approved in advance by the Commissioner;

(b) request for approval must be in writing;

(c) requests for approval must be submitted by the sponsors;

(d) requests for approval must be submitted no less than fifteen days prior to the course; and

(e) requests for approval shall include the proposed agenda, the identity of all speakers at pertinent course(s) and a synopsis of the topics to be addressed in each course for which credit is being requested.

4.8. If the Commissioner receives a request for continuing education approval at least sixty days prior to the course date, the Commissioner will notify applicators of the approval for continuing education credits. The Commissioner will not provide notification of such course approval if the request for its approval was received less than sixty days prior to the course.

4.9. The list of those attending each approved course shall be sent by the sponsor to the Commissioner no later than 7 days after the conclusion of the course. It is the individual's responsibility to confirm that his or her name appears on the attendance list when he or she attends an approved course.

4.10. A course will be approved for continuing education credit if, in the opinion of the Commissioner, it covers at least one topic from the following subject areas adequately to justify the approval for credit. (Subject areas and subtopics are listed in Subparts C – H of this section.)

Subpart C Applicable State, Federal, and Local Laws and Regulations

4.11. State, federal and local regulations dealing with: pesticides, application, disposal, notification, transportation, registration, uses, licensing, worker protection, endangered species, storage, residues and tolerances, emergency planning and right to know, advertising, record keeping, business practices, insurance, training standards, supervision, agricultural chemicals and groundwater, or consumer protection.

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4.12. Compliance problems/actions, analysis of most frequent violations, and discussions of specific problems and actions.

Subpart D Pesticides and Their Families

4.13. Pesticide label and labeling including: label requirements, label terminology, and effect of failure to comply with label requirements.

4.14. Pesticides in general including: families and types, mode of action, and other properties.

4.15. Formulation of pesticides: types, properties, advantages, limitations, toxicity, dilution, mixing, and uses.

4.16. Semiochemicals for pest detection and control.

4.17. Adjuvants and additives.

4.18. Specific pesticide characteristics and concepts including: compatibility, synergism, persistence, environmental fate, resistance, mode of action (contact, systemic, etc.), mobility, leachability, potential for biological concentration and/or accumulation, volatility, solubility, inert ingredients and/or carriers, and phytotoxicity.

4.19. National trends on pesticide problems.

Subpart E Applicator Safety

4.20. Safe use of pesticides by the applicator including: label requirements, transportation, mixing, loading, disposal, equipment cleanup, spill management, storage, application, and precautions to prevent exposure and injury.

4.21. Applicator protection including selection, care, and maintenance of protective clothing and safety equipment.

4.22. Human health effects including: acute and chronic toxicity, hazard determination, routes of exposure, symptoms of pesticide poisoning, and allergies.

4.23. First aid and emergency actions for pesticide exposure and use related injuries.

4.24. Reference sources pertinent to applicator safety including: Material Safety Data Sheet(s) (MSDS), telephone hotlines, emergency procedures, and label requirements.

4.25. Major label revisions and national trends and updates relevant to applicator safety.

4.26. Responsibilities of qualified supervisors, certified operators, technicians and other employees.

Subpart F Public Safety

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4.27. Safe use of pesticides by the applicator including: label requirements, transportation, mixing, loading, disposal, equipment cleanup, spill management, storage, application, and precautions to prevent exposure and injury.

4.28. Human health effects including: acute and chronic toxicity, hazard determination, routes of exposure, symptoms of pesticide poisoning, and allergies.

4.29. Reference sources pertinent to public safety including: Material Safety Data Sheet (s) (MSDS), telephone hotlines, emergency procedures, and label requirements.

4.30. Major label revisions and national trends and updates relevant to public safety.

4.31. Responsibilities of qualified supervisors, certified operators, technicians and other employees.

4.32. Public education about pesticides and pesticide application, public relations, communication and trouble shooting.

4.33. Pesticide sensitivities, allergies, and phobias including chemophobia and entomophobia.

Subpart G Environmental protection

4.34. Precautions to protect the environment and minimize the effects of pest management on it, including: identification of meteorological and climatic factors affecting application (drift, runoff, etc.); identification of terrain, soil, substrata influence on possible surface and ground water contamination; recognition of sensitive areas and organisms that could be affected by application, drift and runoff such as endangered species, wildlife, ornamentals, beneficial insects, humans, and domestic animals; identification of methods of spill prevention, control, and cleanup; observation of preharvest intervals; timing of applications for specific pest controls; and pesticide storage and transportation.

4.35. Major label revisions and national trends and updates relevant to environmental protection.

4.36. Responsibilities of qualified supervisors, certified operators, technicians and other employees.

Subpart H Use

4.37. Mixing and loading including: proper mixing and loading techniques, label requirements, closed systems, adjuvants for drift control and other purposes, measuring, pH of water and other factors to consider, procedures for spill prevention, control and clean up, site location and construction, prevention of contamination, and security.

4.38. Application including: proper application techniques, techniques to control off target movement, new application techniques, procedures for spill prevention, control and clean up, label requirements.

4.39. Equipment including: calibration, selection of correct equipment for the job, maintenance and care, clean up, new equipment.

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4.40. Storage and disposal including: bulk storage, label requirements, site requirements such as ventilation, containment, procedures for spill prevention, control and clean up, disposal of containers, rinsate, excess material, security, fire prevention, posting, temperature, product separation to prevent cross contamination.

4.41. Responsibilities of qualified supervisors, certified operators, technicians and other employees.

4.42. Major label revisions and national trends and updates relevant to pesticide use.

4.43. Practical demonstration of use methods and techniques.

Subpart I Pest Management

4.44. Identification and biology including: principles of host and pest identification and recognition of such organisms, principles of site/habitat identification, damage and/or symptoms caused by pests, recognition of beneficial organisms, understanding host, pest and beneficials life cycles and susceptible stages, and evaluate environmental conditions and ecology on host and pest biology.

4.45. Pest management criteria including: determining economic or aesthetic threshold levels, consideration of environmental impact of control methods, selection of control method, post-treatment evaluation, ability to integrate various pest management methods, comparative effectiveness of management methods and techniques, sampling and survey techniques, host and pest resistance, effects of control methods on host and off target organisms, timing of control alternatives, and pest management history.

4.46. Chemical control methods and practices including: select material, formulation, and/or equipment, determine dosage of selected control, selection of proper pesticides and adjuvants for a particular job, and timing of pesticide application.

4.47. Alternative control methods and practices including: mechanical, biological, cultural, and physical methods, and timing of control methods.

4.48. References for decision making for pest management.

4.49. Major label revisions, evolution of pest management, and national trends and updates relevant to pest management.

Part 5. Technician Training.

Subpart A General

5.1. Definitions. For purposes of this part 5 unless the context otherwise requires:

(a) “Applicator technician” means a technician whose job includes the use of pesticides;

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(b) "Experienced technician" means a technician who has been trained and has the following minimum experience within the past 3 years: for applicator technicians doing structural applications, 6 months of experience including time in training, for applicator technicians doing agricultural, turf, ornamental or turf and ornamental applications, 1 season of experience including time in training, and for sales technicians, 1 season of sales experience;

(1) "New hire experienced technician" means any technician who has met the experience requirements, outlined in subpart (B) of this Part 5, within the last 3 years, but is a new employee of a commercial applicator, registered limited commercial applicator, or registered public applicator.

(2) "On-going experienced applicator technician" means an individual who has met the definition of an experienced technician and continues to work for the same commercial applicator, registered limited commercial applicator, or registered public applicator.

(c) "Sales technician" means a technician whose sole job is selling application services; and

(d) "Selling application services" means the sale of a pesticide application. Selling application services does not include the sale of an evaluation service, inspection service, or recommendation service. To qualify as a sale of an application service, the seller must make an evaluation of pest problems or a recommendation of pest controls using pesticides. A seller does not make an evaluation of pest problems or a recommendation of pest controls using pesticides if the seller answers questions from a customer using an answer sheet prepared by a licensed qualified supervisor.

(e) "Flagger technician" means an individual employed and compensated by the applicator who designates, with a flag or any other identification, the alignment of a pesticide application during the application of pesticides at that site.

5.2. Scope of part 5.

(a) A person will not be considered a technician for purposes of these rules if said person uses, sells, or recommends a general use pesticide while under the on site supervision of a qualified supervisor.

(b) A person who evaluates any pest problem while under the on site supervision of a qualified supervisor will not be considered a technician.

(c) (1) A person must be a trained technician or must be training to be a technician if said person uses, a restricted use pesticide while under the on site supervision of a qualified supervisor.

(2) A person must be training to be a technician to sell or recommend a restricted use pesticide while under the on site supervision of a qualified supervisor.

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(3) A person must be a trained technician to sell or recommend a restricted use pesticide while under the supervision of a qualified supervisor.

(d) A person must be a technician or must be training to be a technician if said person uses, sells, or recommends a general use pesticide while on the job with a certified operator or experienced technician.

(e) A person may not use, sell, or recommend, general use pesticides unaccompanied by a qualified supervisor, certified operator, or experienced technician without completing the training required by these rules.

(f) For the purposes of determining if a person is experienced and/or trained, upon a showing of exceptional circumstances by a commercial applicator, the Commissioner may waive all or part of the experience and training requirements specified in these rules. The Commissioner may accept, with sufficient verification, valid relevant field experience and training obtained from sources other than the commercial applicator in this state or any other state so long as safety is not compromised and the person has the necessary pertinent application skills,

(g) The amount of time given to each topic covered by these rules is discretionary with the trainer. However, the technician's training must be relevant to each technician's job duties.

(h) Each commercial, registered limited commercial, or registered public applicator licensed or registered in any category shall maintain a form established by the Commissioner for each technician trained by said commercial applicator.

(i) Each commercial, registered limited commercial, or registered public applicator licensed or registered in any category may give a written examination to trained technicians to determine the comprehension of subjects covered by the training. However, said examination shall not in any manner substitute for any of the training required by these rules.

Subpart B Agricultural

5.3. Except as otherwise expressly provided in these rules, each applicator technician and flagger technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in any agricultural category shall have at a minimum 36 hours of training:

(a) At least 12 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety; and

(b) At least 24 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of agricultural pesticide application

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experience within the last 2 years. No more than 16 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

5.4. Except as otherwise expressly provided in these rules, each sales technician working for a commercial applicator licensed in any agricultural category shall have at a minimum 36 hours of training:

(a) At least 12 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, pesticides and their families, pest management, pesticide label and labeling, host and pest identification, and public safety;

(b) At least 16 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of agricultural pesticide application experience within the last 2 years. No more than 8 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, pesticides and their families, pest management, pesticide label and labeling, host and pest identification, and public safety; and

(c) The remaining 8 hours shall be divided between classroom-instructional training and on the job training as the need is determined by the qualified supervisor.

5.5. Except as otherwise expressly provided in these rules, each on-going experienced applicator technician, flagger technician, and sales technician continuing to work for the same commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in any agricultural category shall have, during each year of employment after the first season of experience, at a minimum, the following on-going training: 4 hours of training conducted by a licensed qualified supervisor or licensed certified operator which licensed certified operator has at least 1 season of agricultural pesticide application experience within the last 2 years. The qualified supervisor shall determine from those topics enumerated in § 5.3 the training required. Said training may be either classroom-instructional or on the job training as determined by the qualified supervisor.

5.6. Except as otherwise expressly provided in these rules, each new hire experienced technician and flagger technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in any agricultural category shall have at a minimum 16 hours of training:

(a) At least 4 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

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(b) At least 8 hours of which shall be on the job training conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of agricultural pesticide application experience within the last 2 years. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(c) The remaining 4 hours shall be divided between classroom-instructional training and on the job training as the need is determined by the qualified supervisor; and

(d) Experienced sales technicians are not required to complete training in use, equipment and calibration nor applicator safety.

Subpart C Turf

5.7. Each applicator technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the turf category shall have at a minimum 36 hours of training:

(a) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, applicator safety, pesticide label and labeling, and public safety;

(b) At least 4 hours of which shall be classroom-instructional training covering: pest management and host and pest identification; and

(c) At least 24 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of turf pesticide application experience within the last 2 years. No more than 16 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

5.8. Each sales technician working for a commercial applicator licensed in the turf category shall have at a minimum 40 hours of training:

(a) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, pesticides and their families, pesticide label and labeling, and public safety;

(b) At least 8 hours of which shall be classroom-instructional training covering: pest management and host and pest identification; and

(c) At least 24 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator

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which licensed certified operator has at least 1 season of turf pesticide application experience within the last 2 years. No more than 16 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, pesticides and their families, pest management, pesticide label and labeling, host and pest identification, and public safety.

5.9. Each technician who acts as both a sales technician and an applicator technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the turf category shall have at a minimum 48 hours of training:

(a) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, applicator safety, pesticide label and labeling, and public safety;

(b) At least 16 hours of which shall be classroom-instructional training covering: pest management and host and pest identification; and

(c) At least 24 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed qualified supervisor or licensed certified operator has at least 1 season of turf pesticide application experience within the last 2 years. No more than 16 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

5.10. Each on-going experienced applicator technician and sales technician continuing to work for the same commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the turf category shall have, during each year of employment after the first season of experience, at a minimum, the following on-going training: 4 hours of training conducted by a licensed qualified supervisor or licensed certified operator which licensed certified operator has at least 1 year of turf pesticide application experience within the last 2 years. The qualified supervisor shall determine from those topics enumerated in § 5.9 the training required. Said training may be either classroom-instructional or on the job training as determined by the qualified supervisor.

5.11. Each new hire experienced technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the turf category shall have at a minimum 16 hours of training:

(a) At least 4 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(b) At least 8 hours of which shall be on the job training conducted by a licensed qualified supervisor or a licensed certified operator which licensed qualified supervisor or licensed

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certified operator has at least 1 season of turf pesticide application experience within the last 2 years which training shall cover: use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(c) The remaining 4 hours shall be divided between classroom and the job site as the need is determined by the qualified supervisor; and

(d) Experienced sales technicians are not required to complete training in use, equipment and calibration nor applicator safety.

Subpart D Ornamental

5.12. Each applicator technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the ornamental category shall have at a minimum 40 hours of training:

(a) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, applicator safety, pesticide label and labeling, and public safety;

(b) At least 8 hours of which shall be classroom-instructional training covering: pest management and host and pest identification; and

(c) At least 24 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of ornamental pesticide application experience within the last 2 years. No more than 16 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

5.13. Each sales technician working for a commercial applicator licensed in the ornamental category shall have at a minimum 48 hours of training:

(a) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, pesticides and their families, pesticide label and labeling, and public safety;

(b) At least 16 hours of which shall be classroom-instructional training covering: pest management and host and pest identification; and

(c) At least 24 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of ornamental pesticide application experience within the last 2 years. No more than 16 hours of said on the job

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training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, pesticides and their families, pest management, pesticide label and labeling, host and pest identification, and public safety.

5.14. Each technician who acts as both a sales technician and as an applicator technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the ornamental category shall have at a minimum 56 hours of training:

(a) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, applicator safety, pesticide label and labeling, and public safety;

(b) At least 24 hours of which shall be classroom-instructional training covering: pest management and host and pest identification; and

(c) At least 24 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of ornamental pesticide application experience within the last 2 years. No more than 16 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

5.15. Each on-going experienced applicator technician and sales technician continuing to work for the same commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the ornamental category shall have, during each year of employment after the first season of experience, at a minimum, the following on-going training: 4 hours of training conducted by a licensed qualified supervisor or licensed certified operator which licensed certified operator has at least 1 year of ornamental pesticide application experience within the last 2 years. The qualified supervisor shall determine from those topics enumerated in § 5.14 the training required. Said training may be either classroom-instructional or on the job training as determined by the qualified supervisor.

5.16. Each new hire experienced technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the ornamental category shall have at a minimum 16 hours of training:

(a) At least 4 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(b) At least 8 hours of which shall be on the job training conducted by a licensed qualified supervisor or a licensed certified operator which licensed qualified supervisor or licensed certified operator has at least 1 season of ornamental pesticide application experience within the last 2 years. Said training shall cover: use, equipment and calibration,

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pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(c) The remaining 4 hours shall be divided between classroom and the job site as the need is determined by the qualified supervisor; and

(d) Experienced sales technicians are not required to complete training in use, equipment and calibration nor applicator safety.

Subpart E Turf and Ornamental

5.17. Each applicator technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in both the turf category and the ornamental category shall have at a minimum 60 hours of training:

(a) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, applicator safety, pesticide label and labeling, and public safety;

(b) At least 12 hours of which shall be classroom-instructional training covering: pest management and host and pest identification; and

(c) At least 40 hours of which shall be on the job training. At least 16 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of turf and ornamental pesticide application experience within the last 2 years. No more than 24 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

5.18. Each sales technician working for a commercial applicator licensed in both the turf category and the ornamental category shall have at a minimum 64 hours of training:

(a) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, pesticides and their families, pesticide label and labeling, and public safety;

(b) At least 24 hours of which shall be classroom-instructional training covering: pest management and host and pest identification; and

(c) At least 32 hours of which shall be on the job training, at least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed qualified supervisor or licensed certified operator has at least 1 season of turf and ornamental pesticide application experience within the last 2 years. No more than 24 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover environmental precautions, pesticides

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and their families, pest management, pesticide label and labeling, host and pest identification, and public safety.

5.19. Each technician who acts as both a sales technician and as an applicator technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in both the turf category and the ornamental category shall have at a minimum 80 hours of training:

(a) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, applicator safety, pesticide label and labeling, and public safety;

(b) At least 32 hours of which shall be classroom-instructional training covering: pest management and host and pest identification; and

(c) At least 40 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of turf and ornamental pesticide application experience within the last 2 years. No more than 32 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

5.20. Each on-going experienced applicator technician and sales technician continuing to work for the same commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in both the turf category and the ornamental category shall have, during each year of employment after the first season of experience, at a minimum, the following on- going training: 4 hours of training conducted by a licensed qualified supervisor or licensed certified operator which licensed certified operator has at least 1 year of turf and ornamental pesticide application experience within the last 2 years. The qualified supervisor shall determine from those topics enumerated in § 5.19 the training required. Said training may be either classroom-instructional or on the job training as determined by the qualified supervisor.

5.21. Each new hire experienced technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in both the turf category and the ornamental category shall have at a minimum 16 hours of training:

(a) At least 4 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(b) At least 8 hours of which shall be on the job training conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of turf and ornamental pesticide application experience within the last 2 years. Said training shall cover: environmental precautions, use, equipment and calibration,

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pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(c) The remaining 4 hours shall be divided between classroom and the job site as the need is determined by the qualified supervisor; and

(d) Experienced sales technicians are not required to complete training in use, equipment and calibration nor applicator safety.

Subpart F Structural

5.22. Each applicator technician and sales technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the structural categories of wood destroying organism pest control, fumigation, or residential/commercial pest control shall have at a minimum 160 hours of training:

(a) At least 32 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(b) At least 120 hours of which shall be on the job training. At least 60 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 year of structural pesticide application experience within the last 2 years. No more than 60 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(c) The remaining 8 hours shall be divided between classroom-instructional training and on the job training as the need is determined by the qualified supervisor; and

(d) Successfully complete a written examination prepared and given by the commercial applicator showing overall comprehension of the subject matter of the training.

5.23. Each on-going experienced applicator technician and sales technician continuing to work for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the structural categories of wood destroying organism pest control, fumigation, or residential/commercial pest control shall have during each year of employment after the first season of experience, at a minimum, the following on-going training:

(a) 2 hours per month of training which training shall over a period of 6 months include at least 3 hours of classroom-instructional training. 9 hours shall be divided between classroom-instructional training and on the job training as the need is determined by the qualified supervisor. Said classroom-instructional training and on the job training shall be conducted by either a licensed qualified supervisor or licensed certified operator which licensed certified operator has at least 1 year of structural pesticide application

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experience within the last 2 years. Said training shall cover those areas enumerated in § 5.22; and

(b) Successfully complete a written examination prepared and given by the commercial applicator showing overall comprehension of the subject matter of the training.

5.24. Each new hire experienced technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the structural categories of wood destroying organism pest control, fumigation, or residential/commercial pest control shall have at a minimum 32 hours of training:

(a) At least 16 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety; and

(b) At least 16 hours of which shall be the job training conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 year of structural pesticide application experience within the last 2 years which training shall cover: use, equipment and calibration, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

(c) Experienced sales technicians are not required to complete training in use, equipment and calibration nor applicator safety.

5.25. Each applicator technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the structural categories of outdoor vertebrate pest control, stored commodities treatment, wood preservation and wood products treatment, or interior plant pest control shall have at a minimum 36 hours of training:

(a) At least 12 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety; and

(b) At least 24 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of structural pesticide application experience within the last 2 years. No more than 16 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

5.26. Each sales technician working for a commercial applicator licensed in the structural categories of outdoor vertebrate pest control, stored commodities treatment, wood preservation and wood products treatment, or interior plant pest control shall have at a minimum 36 hours of training:

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(a) At least 12 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, pesticides and their families, pest management, pesticide label and labeling, host and pest identification, and public safety;

(b) At least 16 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of structural pesticide application experience within the last 2 years. No more than 8 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, pesticides and their families, pest management, pesticide label and labeling, host and pest identification, and public safety; and

(c) The remaining 8 hours shall be divided between classroom-instructional training and on the job training as the need is determined by the qualified supervisor.

5.27. Each on-going experienced applicator technician and sales technician continuing to work for the same commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the structural categories of outdoor vertebrate pest control, stored commodities treatment, wood preservation and wood products treatment, or interior plant pest control shall have, during each year of employment after the first season of experience, at a minimum, the following on-going training: 4 hours of training conducted by a licensed qualified supervisor or licensed certified operator which licensed certified operator has at least 1 season of structural pesticide application experience within the last 2 years. The qualified supervisor shall determine from those topics enumerated in § 5.25 the training required. Said training may be either classroom-instructional or on the job training as determined by the qualified supervisor.

5.28. Each new hire experienced technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in the structural categories of outdoor vertebrate pest control, stored commodities treatment, wood preservation and wood products treatment, or interior plant pest control shall have at a minimum 16 hours of training:

(a) At least 4 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(b) At least 8 hours of which shall be on the job training conducted by a licensed qualified supervisor or a licensed certified operator which licensed certified operator has at least 1 season of structural pesticide application experience within the last 2 years. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(c) The remaining 4 hours shall be divided between classroom-instructional training and on the job training as the need is determined by the qualified supervisor; and

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(d) Experienced sales technicians are not required to complete training in use, equipment and calibration nor applicator safety.

Part 6. Records.

Subpart A Recordkeeping Requirements for Commercial, Registered Limited Commercial and Registered Public Applicators

6.01. Licensed commercial applicators, shall maintain accurate and legible office records of each application of pesticides made for hire.

6.02. Registered limited commercial and registered public applicators shall maintain accurate and legible office records of each application of pesticides.

6.03. Such records shall include all of the following information:

(a) Name and address of person for whom application was made.

(b) Location where application was made, if different from number 6.03(a). The location of a field should be fully described. In the case of roadside weed control applications, the record should include the county or state road number and the portion of roadside treated, described by reference to mileage markers or prominent geological features such as road intersections, river or creek crossings, or the like.

(c) Target pest. This means the specific pest for which the application was made. A general term is acceptable only if the pesticide label specifically refers to that exact term (such as “broadleaf weeds”).

(d) Site, crop, commodity or structure treated.

(e) Specific pesticide applied. This shall be accomplished by recording the EPA registration number of the pesticide product. The brand name of the pesticide product and the name and address of its manufacturer may also be included in this record.

(f) Dilution rate. This is the amount of formulated product or active material per unit of volume of carrier specified as such. In the case of a product applied out of the container without mixing, the entry should be “no dilution”, “aerosol”, or “RTU” (ready to use), as applicable.

(g) Application rate. This is the total gallons or pounds of the final tank mix applied per unit of area or volume. In the case of “crack and crevice” structural treatment, the entry should indicate “crack and crevice”. The entry for a livestock application should indicate “dip” or “spray”, as appropriate. In the case of an application of a pesticide labeled “spray until wet,” “spray to runoff,” or the like, the entry should indicate the nature of the application in language consistent with the label directions.

(h) Carrier, if other than water.

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(i) Date and time of application. The record shall indicate the time, within at least one-half hour accuracy, when the application was started or stopped. Each applicator's records shall be kept consistently and clearly, in such a manner as to allow ready determination as to whether a noted time indicates the beginning or end of the application. An entry merely stating “A.M.” or “P.M.” is not sufficient to comply with this rule.

(j) Name of the person who made the application (i.e., technician, certified operator, qualified supervisor). If a restricted use pesticide application is performed by an applicator technician, the record of application shall include the names of both the technician and the responsible on-site qualified supervisor.

6.04. Any applicator performing wood destroying insect control, for the control of termites, shall keep, in addition to record keeping requirements outlined in section 6.03 above, the following information:

(a) For all commercial pre-construction treatments, the licensee must maintain records of square footage treated per application site, flow rate of the application equipment, and the start and stop time for the treatment. If a physical barrier is used, the square footage of the physical barrier shall be recorded and a diagram describing the installation shall be provided.

(b) Each post construction termite liquid and bait treatment record shall include:

(1) A diagram, blueprint, or building plat and a description of the structure or structures to be treated, including the following:

(A) Approximate measurements as accurately as practical;

(B) Areas of known current termite activity;

(C) Areas of known previous termite activity;

(D) Areas of known conditions conducive to termite activity;

(E) Areas to be treated and by what means, (i.e.: slab injection, trenching).

(2) A copy of the signed customer contract and any warranty information provided to the customer, including any job specific exclusions, limitations or amendments.

(3) An original or legible copy of the original label for any pesticide used.

(4) The signature of approval on the proposed treatment diagram by a qualified supervisor licensed in the wood destroying organism category who is employed by or associated with the applicator making the proposal.

(5) For termite baiting programs:

(a) The number and locations of baiting and monitoring stations to be installed;

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(b) All service inspections of termite bait stations must be kept as part of that customer's service record and service frequency must be performed as recommended by the manufacturer's label requirements.

Subpart B Recordkeeping Requirements for Private Applicators

6.05. Licensed private applicators shall maintain accurate and legible records of each restricted use pesticide application in accordance with all regulations of the United States Department of Agriculture's federal pesticide recordkeeping requirements set forth in the Code of Federal Regulations, at 7 C.F.R., Part 110 (2006), incorporated herein by reference (later amendments not included). Pursuant to §35-10-111 of the Act, such records shall be retained for a period of three years from the date of the pesticide application.

Part 7. Business Practices, Equipment Identification, Notices.

7.01. Equipment identification.

a) Commercial applicator equipment identification:

1) All motor vehicles, trailers, and mobile application equipment while used by or on behalf of any licensee for applying or carrying pesticides shall be identified by displaying thereon, in letters not less than two inches high, the company business name and, in letters not less than one inch high, the city and state of said licensee's place of business. Such lettering on a licensee's equipment shall be clearly legible, and shall not be rendered difficult to read or illegible by means of paint fading, scuffing, wear and tear, damage, or any other cause. Any motor vehicle so identified shall be identified on both sides of the vehicle. This rule shall not apply to aircraft, small capacity sprayers with less than a ten-gallon capacity, and application equipment mounted on vehicles marked in accordance with these rules.

2) Vehicles with a spray tank holding more than a ten-gallon capacity that due to the size or design of the vehicle do not provide sufficient surface area to comply with the identification requirements outlined in 7.01(a)(l) shall be identified by displaying thereon, in letters not less than one inch high, the company business name of said licensee. Such lettering on a licensee's equipment shall be clearly legible, and shall not be rendered difficult to read or illegible by means of paint fading, scuffing, wear and tear, damage, or any other cause. Any motor vehicle so identified shall, at a minimum, be identified on one side of the vehicle.

b) Public applicator equipment identification:

1) Any public applicator registered with the Department shall identify all motor vehicles, trailers, and mobile application equipment while used by or on behalf of such registrant for applying or carrying pesticides by displaying, in letters not less than two inches high, the city or state name, or a logo identifying the registered public entity they represent. Such lettering on a registrant's equipment shall be positioned and maintained so as to be clearly legible, and shall not be rendered

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difficult to read or illegible by means of paint fading, scuffing, wear and tear, damage, or any other cause. Any motor vehicle so identified shall be identified on both sides of the vehicle. This rule shall not apply to aircraft, small capacity sprayers with less than a ten-gallon capacity, and application equipment mounted on vehicles marked in accordance with these rules.

2) Vehicles with a spray tank holding more than a ten-gallon capacity that due to the size or design of the vehicle do not provide sufficient surface area to comply with the identification requirements outlined in 7.01(b)(l) shall be identified by displaying thereon, in letters not less than one inch high, the city or state name, or logo, identifying which public entity they represent. Such lettering on a registrant's equipment shall be clearly legible, and shall not be rendered difficult to read or illegible by means of paint fading, scuffing, wear and tear, damage, or any other cause. Any motor vehicle so identified shall, at a minimum, be identified on one side of the vehicle.

7.02. All licensees must inform the Commissioner, in writing, of any change in their address or telephone number.

7.03. Each qualified supervisor or certified operator must notify the Commissioner in writing when he or she begins employment with a commercial, registered limited commercial, or registered public applicator, terminates employment, or when he or she changes branches, divisions, satellite offices or employers. Such notification shall be within 15 days of said employment, termination, or change.

7.04. Each commercial, registered limited commercial, and registered public applicator must notify the Commissioner in writing when a qualified supervisor in its employ terminates employment, or changes branches, divisions or satellite offices, or when adding a qualified supervisor to its staff. Such notification shall be within 15 days of said termination, change, or addition.

7.05 The original product container with labeling or a copy of the pesticide label and any attached labeling for each product in use shall be in the possession of the commercial, registered limited commercial, or registered public applicator employee at the site of application whenever a pesticide application is performed. This rule shall not apply to aerial applicators or private applicators.

Part 8. Agricultural Applicators.

8.01. The agricultural classification includes the following categories:

(a) Agricultural Insect Control: the application of pesticides to agricultural plants, including applications performed on pastures, croplands and non-crop agricultural lands, to control invertebrate pests, including insects, mites, slugs, snails, and nematodes.

(b) Agricultural Plant Disease Control: the application of pesticides to agricultural plants, including applications performed on pastures, croplands and non-crop agricultural lands, to control plant diseases.

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(c) Agricultural Weed Control: the application of pesticides to agricultural lands, including pastures, croplands and non-crop agricultural lands, to control weeds.

(d) Seed Treatment: the application of pesticides to seeds.

(e) Livestock Pest Control: the application of pesticides to livestock.

(f) Forest Pest Control: the application of pesticides in forests, forest nurseries, forest seed producing areas managed for the production of timber and other forest products or maintained as wood vegetation for such indirect benefits as protection of catchment areas or public recreation, including windbreaks and downed timber. For applications in forested areas within fifty (50) feet of a residential or commercial structure, an applicator must also hold the ornamental pest control category in accordance with Part 9 of these rules and comply with all of the posting and notification requirements in section 35-10-112, C.R.S., of the Pesticide Applicators' Act. This additional certification in the ornamental pest control category shall not apply to aerial applicators or ground applications made by federal, state, or local governments on property they own.

(g) Rangeland Pest Control: the application of pesticides to land which is not managed for turf, pasture or forest on which the vegetation is predominantly native plant species of introduced species managed as native species such as grasses, grass-like plants, forbs or shrubs. Rangelands include but are not limited to natural grasslands, shrublands, deserts, tundras, and meadows. For applications performed in rangeland areas within fifty (50) feet of a residential or commercial structure, an applicator must also hold the turf pest control category in accordance with Part 9 of these rules and comply with all of the posting and notification requirements in section 35-10-112, C.R.S., of the Pesticide Applicators' Act. This additional certification in the ornamental pest control category shall not apply to aerial applicators or ground applications made by federal, state, or local governments on property they own.

(h) Aquatic Pest Control: the application of pesticides to standing or running water, except for pesticide applications which are included in the “Public Health” category, at rule 8.01(j).

(1) Metam sodium for root control in sewers: the application of metam sodium in sewers to control roots. For purposes of this sub-category, “sewer” shall mean any artificial conduit for the transmission of wastewater to a wastewater treatment plant.

(i) Industrial and Right-of-Way Weed Control: the application of pesticides to maintain roads, sidewalks, trails, paths, utility lines, railways, parking lots, drilling rigs, substations, open irrigation and drainage structures or similar areas and adjacent land within right of ways associated with such areas for the purpose of establishing or maintaining definable cover or bare ground.

(j) Public Health Pest Control: the application of pesticides for control of disease vectors, except vertebrates.

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(k) Research and Demonstration: the application of pesticides in the course of conducting field research or demonstration. No license or certification will be issued in this category unless the applicant also obtains licensing or certification, in the specific category listed in these rules, which is appropriate to the research activity.

8.02. Applicants for licensing as a qualified supervisor in the agricultural pest control categories, except the metam sodium for root control in sewers sub-category, must have the following field experience or equivalents. Such field experience must have been obtained within the five years immediately preceding the date of the applicant's application for licensing.

(a) Said applicant shall have obtained a minimum of eight months field experience in agricultural pest control.

(b) If said applicant has earned college or university credit in agricultural pest control or related fields, such credit may be combined with field experience in agricultural pest control in order to qualify for licensing as a qualified supervisor, as follows:

(1) Two years college credit and two months field experience in agricultural pest control; or

(2) One year college credit and five months field experience.

8.03. Commercial applicators classified in the agricultural categories shall provide the following notices of pesticide applications.

(a) Prior to each application, the customer shall be informed of: (1) the pesticide(s) to be applied, (2) the site of application, (3) applicable re-entry intervals, (4) applicable grazing intervals, (5) applicable pre-harvest interval, and (6) any precautionary statements contained on the applicable pesticide label(s). This notice may be oral.

(b) After the application, the applicator shall promptly furnish the customer with a written notice which states: (1) the pesticide(s) applied; (2) the amount of each pesticide applied; (3) the date of application; (4) the site of application; (5) applicable re-entry intervals; (6) applicable grazing intervals; (7) applicable crop rotation intervals; and (8) any precautionary statements contained on the pesticide label(s).

(c) An applicator may furnish the information specified in sections (a)(3) through (6), and/or (b)(5) through (8) above, by giving the customer a copy of the applicable pesticide label(s).

(d) In the event that a commercial applicator classified in the agricultural categories performs an application at a site which is occupied by someone other than the applicator's customer, he or she shall be responsible for giving the notices required by sections (a) and (b) above to the person(s) who are occupying the site, as well as to the customer: This section (d) does not apply to applications to crops or to large-scale pest control programs.

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8.04 An applicant for licensing in the sub-category of metam sodium for root control in sewers shall satisfy each of the following requirements:

(a) In addition to any other required examination, an applicant must take and pass the specific examination for this sub-category, but not the examination for the aquatic pest control category.

(b) An applicant for licensing as a qualified supervisor in this sub-category must have the following field experience or equivalents. Such field experience must have been obtained within the five years immediately preceding the date of the applicant's application for licensing.

(1) An applicant shall have obtained a minimum of 40 hours of field experience in the application of pesticides in sewers, including, but not limited to, metam sodium for root control in sewers; or

(2) If an applicant has a Level 2 or 3 wastewater collection certification issued by the Colorado Water Distribution and Wastewater Collection Systems Council, or a Class A, B, or C wastewater treatment plant operator certification issued by the Colorado Department of Public Health and Environment pursuant to Title 25, Article 9 of the Colorado Revised Statutes, the applicant shall have obtained a minimum of 20 hours of field experience in the application of pesticides in sewers, including, but not limited to, metam sodium for root control in sewers.

(c) Each applicator technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in this sub-category shall have at a minimum 32 hours of training:

(1) At least 8 of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety; and

(2) At least 24 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator, which licensed certified operator has at least 20 hours of experience in the application of pesticides in sewers, including, but not limited to, metam sodium for root control in sewers, within the last 2 years. No more than 16 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety.

(d) Each sales technician working for a commercial applicator licensed in this sub-category shall have at a minimum 32 hours of training:

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(1) At least 8 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, pesticides and their families, pest management, pesticide label and labeling, host and pest identification, and public safety;

(2) At least 16 hours of which shall be on the job training. At least 8 hours of this training shall be conducted by a licensed qualified supervisor or a licensed certified operator, which licensed certified operator has at least 20 hours of experience in the application of pesticides in sewers, including, but not limited to, metam sodium for root control in sewers, within the last 2 years. No more than 8 hours of said on the job training may be conducted by an experienced technician trained by the applicator. Said training shall cover: environmental precautions, pesticides and their families, pest management, pesticide label and labeling, host and pest identification, and public safety; and

(3) The remaining 8 hours shall be divided between classroom-instructional training and on the job training as the need is determined by the qualified supervisor.

(e) Each applicator technician or sales technician continuing to work for the same commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in this sub-category shall have after the first season of experience, at a minimum, the following on-going training: 4 hours of training conducted by a licensed qualified supervisor or licensed certified operator, which licensed certified operator has at least 20 hours of experience in the application of pesticides in sewers, including, but not limited to, metam sodium for root control in sewers, within the last 2 years. The qualified supervisor shall determine from those topics enumerated above in sub-sections (c) (1) and (2) the training required. Said training may be either classroom-instructional or on the job training as determined by the qualified supervisor.

(f) Each new hire experienced technician working for a commercial applicator, registered limited commercial applicator, or registered public applicator licensed or registered in this sub-category shall have at a minimum 16 hours of training:

(1) At least 4 hours of which shall be classroom-instructional training covering: applicable State, Federal, and local laws and regulations, environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

(2) At least 8 hours of which shall be on the job training conducted by a licensed qualified supervisor or a licensed certified operator, which licensed certified operator has at least 20 hours of experience in the application of pesticides in sewers, including, but not limited to, metam sodium for root control in sewers, within the last 2 years. Said training shall cover: environmental precautions, use, equipment and calibration, pesticides and their families, pest management, applicator safety, pesticide label and labeling, host and pest identification, and public safety;

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(3) The remaining 4 hours shall be divided between classroom-instructional training and on the job training as the need is determined by the qualified supervisor; and

(4) Experienced sales technicians are not required to complete training in use, equipment and calibration, nor applicator safety.

Part 9. Ornamental Applicators.

9.01. The ornamental classification includes the following categories:

(a) Turf Pest Control: the application of pesticides to: (1) turf to control invertebrate pests, including insects, mites, slugs, snails, and nematodes, or to control plant diseases or weeds; or (2) ornamental beds to control weeds.

(b) Ornamental Pest Control: the application of pesticides to ornamental trees, shrubs, beds, flowers and other ornamental plants, except turf or indoor ornamental plants, to control invertebrate pests, including insects, mites, slugs, snails and nematodes, or to control plant diseases.

9.02. Applicants for licensing as a qualified supervisor in the turf category, described in § 9.01 (a) must have the following experience or equivalents. Such field experience must have been obtained within the two years immediately preceding the date of the applicant's application for licensing. Experience in the application of pesticides gained by the applicant in the maintenance of his own home shall not constitute experience which will satisfy experience requirements imposed by these rules.

(a) Said applicant shall have obtained at least four months of field experience in turf pest control.

(b) If said applicant has earned college or university credit in turf pest control or related fields, such credit may be combined with field experience in order to qualify for licensing, as follows:

(1) Two years college credit and one month field experience; or

(2) One year college credit and two and one-half months field experience.

9.03. Applicants for licensing as a qualified supervisor in the ornamental category described in § 9.01(b) must have the following field experience or equivalents. Such field experience must have been obtained within the five years immediately preceding the date of the applicant's application for licensing. Experience in the application of pesticides gained by the applicant in the maintenance of his own home shall not constitute experience which will satisfy experience requirements imposed by these rules.

(a) Said applicant shall have obtained at least eight months field experience in ornamental pest control, gained within not less than two calendar years.

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(b) If said applicant has earned college or university credit in ornamental pest control or related fields, such credit may be combined with field experience in order to qualify for licensing as a qualified supervisor, as follows:

(1) Two years college credit and four months field experience; or

(2) One year college credit and six months field experience in ornamental pest control.

9.04. Commercial applicators classified in the ornamental category shall provide the following notices of pesticide application:

(a) Except as provided below, at the time any pesticide is applied, the commercial applicator shall leave for each customer, or for an individual at each location where an application was made if different from the customer's address, a printed or legibly written statement disclosing the fact that a pesticide has been applied, naming the pesticide or pesticides applied, the date of application, and containing such precautionary statements appearing on the pesticide's label as are necessary or appropriate to avoid endangering the health of persons or animals, or to avoid an unreasonable risk of harm to property.

(b) When any pesticide is applied at a commercial property site where an owner of the site or an agent of an owner of the site is not present at the site, the commercial applicator shall, promptly after the application, furnish the customer with a written statement that states: (1) the pesticide(s) applied; (2) the date of application; and (3) such precautionary statements appearing on the pesticide's label as are necessary or appropriate to avoid endangering the health of persons or animals, or to avoid an unreasonable risk of harm to property. This precautionary information may be furnished by giving the customer a copy of the label(s) of any pesticide applied.

(c) When any pesticide is applied at a multi-unit dwelling site where an owner of the site or an agent of an owner of the site is not present at the site, the commercial applicator shall, promptly after the application, furnish the customer with a written statement containing the information required in subsection 9.04 (b) above and shall post notice-of-application signs containing the information required by § 35-10-112(2)(d), C.R.S.

Part 10. Structural Applicators.

10.01. The structural pest control classification includes the following categories.

(a) Wood Destroying Organism Pest Control: the application of pesticides to control termites, carpenter ants, powder post beetles, fungi, and/or other wood destroying organisms in structures and/or adjacent outside areas.

(b) Outdoor Vertebrate Pest Control: the application of pesticides or bait stations intended for preventing, destroying, repelling or mitigating any amphibian, reptile, bird, fish, feral dogs and cats, moles, voles, bats, wild carnivores, rabbits, skunks, and any other vertebrate pest, except rats and mice.

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(c) Fumigation: the application of a fumigant to one or more rooms in a structure or to the entire structure at a desired concentration and for a length of time necessary for the control of rodents and/or insect pests, including the application of a fumigant to a localized space or harborage within a structure for local insect and/or rodent control.

(d) Residential/Commercial Pest Control: the application of pesticides or bait stations intended for use for preventing, destroying, repelling or mitigating structural pests, including without limitation insects and rodents. However, this category does not include the application of fumigants or actions taken to control wood destroying organisms, outdoor vertebrates, or grain storage pests.

(e) Stored Commodities Treatment: the application of pesticides for the treatment of pests in raw grain stored in facilities which are not used for animal or human habitation; the application of plant growth regulators to agricultural commodities stored in facilities which are not used for animal or human habitation; and the application of pesticides to commodity processing equipment or commodity storage facilities (not including offices or other structures).

(f) Wood Preservation and Wood Products Treatment: the application of pesticides to prevent, destroy, repel or mitigate pests in wood or wood products which are, or are capable of being, incorporated into a structure, not including downed timber prior to bark removal or sawing.

(g) Interior Plant Pest Control: the application of pesticides to house plants and other indoor ornamental plants kept or located within structures occupied by humans, including, but not limited to houses, apartments, offices, shopping malls, other places of business and other dwelling places, to control invertebrate pests that adversely affect such plants, including insects, mites, slugs, snails and nematodes; and to control plant diseases.

10.02. An applicant for licensing as a qualified supervisor in the structural pest control categories of wood destroying organisms, household pest control, and fumigation must have the following field experience or equivalents. Such field experience must have been obtained during the five years immediately preceding the date of the applicant's application for licensing. Experience using pesticides gained while the applicant was maintaining his own home, or performing janitorial or maintenance duties for another in a residential, industrial or commercial location will not satisfy experience requirements imposed by these regulations.

(a) Said applicant must have obtained at least twenty-four months field experience in structural pest control. In addition, an applicant for licensing as a qualified supervisor in the structural pest control category of wood destroying organisms must have obtained, within the two years immediately preceding the date of the applicant's application for licensing, at least 100 hours of verifiable field experience in termite control. A minimum of 30 of said 100 hours must consist of verifiable “hands-on” field experience covering drill and inject and other post-treat methods and applications. Any or all of the 100 hours may be obtained in courses approved by the Commissioner.

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(b) If said applicant has earned college or university credit in structural pest control or related fields, such credit may be combined with field experience in related categories of structural pest control in order to qualify for licensing as a qualified supervisor, as follows:

(1) Four years college credit and four months field experience; or

(2) Three years college credit and nine months field experience; or

(3) Two years college credit and fourteen months field experience; or

(4) One year college credit and nineteen months field experience.

10.03. An applicant for licensing as a qualified supervisor in the structural pest control categories of outdoor vertebrates, wood preservation and wood products treatment, stored commodities treatment, or interior plant pest control must have the following field experience or equivalents. Such field experience must have been obtained within the five years immediately preceding the date of the applicant's application for licensing:

(a) Said applicant must have obtained at least eight months field experience in the related categories of structural pest control.

(b) If said applicant has earned college or university credit in the related categories of structural pest control, such credit may be combined with field experience in related categories of structural pest control in order to qualify for licensing as a qualified supervisor, as follows:

(1) Two years college credit and two months field experience; or

(2) One year college credit and five months field experience.

10.04. At the time of a pesticide application, a commercial applicator licensed in any structural pest control category shall leave for each customer, a printed or legibly written notice stating the name of each pesticide applied, the date applied, and such precautionary statements from the label of the pesticide as are necessary or appropriate to avoid endangering human or animal health, or to avoid creating an unreasonable risk of damage to property.

10.05. In the event that the customer is not the occupant, at the time of a pesticide application a commercial applicator licensed in any structural pest control category shall leave for the occupant, a printed or legibly written notice stating the name of each pesticide applied, the date applied, and such precautionary statements from the label of the pesticide as are necessary or appropriate to avoid endangering human or animal health, or to avoid creating an unreasonable risk of damage to property.

Part 11. Storage.

Subpart A Storage Requirements for Commercial, Registered Limited Commercial, Registered Public Applicators

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11.01. All commercial, registered limited commercial, or registered public applicators shall store pesticide concentrates and dilute mixtures using methods which are reasonably calculated to prevent the contamination of other products by means of volatilization, leakage, breakage or other causes, and which are reasonably calculated to avoid the creation of an unreasonable risk of harm to persons, property, domestic or wild animals, or the environment.

11.02. Pesticide storage areas shall be kept clean and orderly, and pesticide containers shall be positioned so that they are not exposed to unreasonable risk of damage to the containers or their labels.

11.03. Indoor pesticide storage areas shall be secured from access by unauthorized persons, including the general public, and locked when the building is unoccupied by an applicator or his employees.

11.04. Outdoor pesticide storage areas shall be fenced or walled, and locked. Pesticides and pesticide containers shall be covered or otherwise protected from the elements, in a manner which is reasonably calculated to minimize the risk of damage to labels, and to avoid the creation of an unreasonable risk of harm to persons, property or domestic or wild animals.

11.05. Pesticide storage areas shall be marked with a sign, in letters at least one inch high, which reads: “WARNING: HAZARDOUS MATERIALS (PESTICIDES) ARE CONTAINED WITHIN. In case of emergency, contact: (name) at (telephone number).” Compliance with this rule is not necessary for any person who has marked his storage areas with signs which comply with the local fire department requirements.

11.06. Each commercial, registered limited commercial, or registered public applicator storing pesticides shall inform the local fire department of the location of the pesticide storage, and shall provide the fire department with material safety data sheets for all pesticides held at the location.

11.07. Each commercial, registered limited commercial, or registered public applicator who stores pesticides shall have available, at each storage location, in good working order, one or more fire extinguishers rated for chemical fires, and materials for use in cleaning up pesticide spills.

11.08. A service container that is not at all times in the immediate custody or control of a qualified supervisor, certified operator, or technician shall have prominently displayed thereon the following information from the label affixed to the pesticide's original container: the common name of each active ingredient, if there is such a common name, or the chemical name of each active ingredient; the EPA Registration Number; each and every human hazard signal word shown on the label, and the name of the commercial, registered limited commercial, or registered public applicator. For purposes of this section 11.08, “service container” shall mean any container holding pesticide, whether in a concentrated or diluted form, other than the pesticide's original container, that is of a size and capacity that permits it to be carried or moved by only one individual, unaided by any tool or apparatus; and “human hazard signal word” shall mean those human hazard signal words required by the U.S. Environmental Protection Agency in its rules and regulations at 40 C.F.R. § 156.10(h) (1995), to be shown on the front panel of the label affixed to the pesticide's original container. Compliance with this rule is not necessary if the service container is marked in compliance with the rules and regulations of the occupational safety and health administration, U.S. Department of Labor at 29 C.F.R. § 1910.1200 and appendices A through E, inclusive, thereto (1995), applicable to hazard communication for chemicals.

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(a) The incorporation in this section of the aforesaid regulations of the U.S. Environmental Protection Agency and the Occupational Safety and Health Administration, U.S. Department of Labor does not include any later amendments to or editions of such incorporated material.

(b) Information concerning the aforesaid incorporated regulations of the U.S. Environmental Protection Agency and the Occupational Safety and Health Administration, U.S. Department of Labor may be obtained from:

Deputy Commissioner
Colorado Department of Agriculture
700 Kipling St, Suite 4000
Lakewood, CO 80215-8000

and may be examined at any state publications depository library.

Subpart B Storage Requirements for Licensed Private Applicators

11.09. All licensed private applicators shall store pesticide concentrates and dilute mixtures using methods which are reasonably calculated to prevent the creation of an unreasonable risk of harm to persons, property, domestic or wild animals, or the environment.

11.10. Pesticide containers shall be stored so that they are not exposed to unreasonable risk of damage to the containers or their labels.

11.11. Pesticides and pesticide containers, stored in outdoor pesticide storage areas, shall be covered or otherwise protected from the elements, in a manner which is reasonably calculated to minimize the risk of damage to labels, and to avoid the creation of an unreasonable risk of harm to persons, property or domestic or wild animals.

Part 12. Registry of Pesticide-Sensitive Persons.

12.01. Persons who apply to be placed on the pesticide-sensitive registry, which registry is hereby established, shall complete and submit an application for said registry. Said application shall be on a form provided by the Commissioner. The application shall include a statement of proof of medical justification by a physician licensed in the state of Colorado.

12.02. Persons who apply to be placed on the registry or who apply for renewal of their registration, shall list those addresses which abut their residence.

12.03. Each registration shall expire on November 1 of each year.

12.04. Each person shall report to the Commissioner, on a form provided by the Commissioner, any change to the information provided in such person's application or in such reports previously submitted, within fifteen days of such change.

12.05. Each person shall make an application to renew his registration on or before the first working day of November for the year of renewal. Said application shall be on a form provided by the

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Commissioner. The renewal application form shall include a statement of proof of medical justification by a physician licensed in the state of Colorado, which must be submitted every two years.

Subpart A Ornamental Notification

12.06. A commercial, registered limited commercial, or registered public applicator shall take reasonable actions to give notice of the date and approximate time of each and every turf or ornamental pesticide application, prior to the application, to any person who resides on property which abuts the property to be treated and whose name is on the published registry. Notification of each pesticide application to such an abutting property, including the address or location of the property to be treated, must be communicated to the pesticide sensitive person. An applicator may meet this requirement by making not less than two attempts to notify any owner or tenant who is on the registry. Such attempts shall be made as early as practicable but not later than twenty-four hours before the application.

12.07. Notice may be by any method, including telephone, mail or personal notification. If attempts at notification by the applicator fail, and a pesticide application is necessary, the commercial, registered limited commercial, or registered public applicator shall attempt to notify the resident in person immediately prior to the application. Notice of the application and attempts at notification shall be placed on the door of the person requesting notification if all notification attempts fail.

Subpart B Structural Notification

12.08. A commercial, registered limited commercial, or registered public applicator shall take reasonable actions to give notice of the date and approximate time of any wood-destroying, residential/commercial, or interior plant pest control pesticide application, made to multi-unit dwellings, prior to the application, to any person who resides in the multi-unit dwelling to be treated and whose name is on the published registry unless otherwise noted in 12.10 of this section.

12.09. An applicator may meet the notification requirement by making not less than two attempts to notify any owner or tenant who is on the registry. Such attempts shall be made as early as practicable but not later than twenty-four hours before the application. Notice may be by any method, including telephone, mail or personal notification. If attempts at notification by the applicator fail, and a pesticide application is necessary, the commercial, registered limited commercial or registered public applicator shall attempt to notify the resident in person immediately prior to the application. Notice of the application and attempts at notification shall be placed on the door of the person requesting notification if all notification attempts fail.

12.10. The following circumstances do not require notification, as outlined in 12.08 of this section, by structural applicators:

a) Emergency structural applications needed to ensure the safety or welfare of the general public, where it is not reasonably possible to comply with the notification requirements outlined in §12.08.

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i) Applications specified in this section, 12.10(a), require the applicator to attempt to notify any owner or tenant who is on the registry immediately prior to the application.

ii) Upon completion of the pesticide application, the applicator shall leave for each person on the registry, a printed or legibly written notice stating the name of each pesticide applied, the date and time the application was made, placement of the treatment, and such precautionary statements from the label of the pesticide that are necessary or appropriate to avoid endangering the pesticide sensitive person's health.

iii) The notification requirement in this section (a) is in addition to the requirements for the notice of application outlined in sections 10.04 and 10.05 of these rules.

b) The use of rodenticide baits or insecticide baits that are in any of the following formulations: gel baits, solid baits, granular, or self-contained bait stations that prevent contact with the insecticide or rodenticide. Applications shall only be applied to common areas, in a manner where no physical contact can be made with the pesticide, or units, other than the pesticide sensitive person's individual dwelling unit. Compliance with the notice of application requirements in sections 10.04 and 10.05 of these rules are still required.

Part 13. Notification of Pesticide Applications.

13.01. Any commercial, registered limited commercial, or registered public applicator making a pesticide application in any turf or ornamental category shall post, at the time of application, at least one sign notifying the public of the application.

13.02. The bottom of each notice-of-application sign must project at least 18 inches above the ground and the top of the sign shall be no higher than 48 inches above the ground.

13.03. The sign must be posted on a lawn or yard at the property boundary between two feet and five feet from the sidewalk; if there is no sidewalk, between two and five feet from the road; or, if there is no road, between two and five feet from the property boundary. When landscaping or other conditions would make a sign inconspicuous or illegible if the sign were posted within the distances specified in this paragraph, the sign shall be posted in a similar manner such that it is conspicuous and easily legible to any adult or child entering or passing the property on foot.

13.04. For greenbelts, parks, golf courses, athletic fields, playgrounds, common property of multi-unit residential and commercial properties, or other similar recreational or common property, the signs must be posted immediately adjacent to areas within the property where pesticides have been applied in a manner that is conspicuous and easily legible to any adult or child entering the treated area(s). For applications on a golf course, the applicator shall post a sign at the clubhouse and at the first tee and the tenth tee notifying the public of the application.

13.05. Any commercial, registered limited commercial, or registered public applicator making an aquatic pesticide application in any body of water with any legal public access shall post a sign notifying the public of the application at each place of legal public access.

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Part 14. Invoice Statement.

14.01. Each commercial applicator shall include the following statement in at least 10 point legible type on the front, either at the top or bottom, of each customer invoice.

Commercial applicators are licensed by the Colorado Department of Agriculture.

14.02. This requirement may be met by any means other than handwriting or hand-printing including without limitation, printing, printed sticker, stamping, or typewriting.

Part 15. Enforcement.

15.01 The phrase "substantial danger or harm to public health and safety, to property, or to the environment" as used in § 35-10-121(2.5), C.R.S. means the existence of a condition which could reasonably be expected to cause, or the actual occurrence of:

(i) physical illness, injury, or death to one or more individuals;

(ii) damage to property, either real or personal; or

(iii) any adverse impact on land, air or water resources that is appreciable and not immediately reparable.

15.02 Any person who uses any pesticide classified for restricted use must be licensed as a qualified supervisor, certified operator, or private applicator in accordance with the Act and these rules, except:

(i) any technician not licensed as a certified operator who is applying restricted use pesticides under the on-site supervision of a qualified supervisor or mixing and loading restricted use pesticides under the supervision of a qualified supervisor, and;

(ii) any person working under the supervision of a licensed private applicator for the purposes of raising an agriculture commodity.

15.03 Any person who supervises the use of any pesticide classified for restricted use must be licensed as a qualified supervisor or private applicator in accordance with the Act and these rules.

15.04 A qualified supervisor, certified operator or private applicator shall not use or supervise the use of a restricted use pesticide in any category of licensure the person does not hold.

Part 16. Statements of Basis, Specific Statutory Authority & Purpose

Statements of Basis, Specific Statutory Authority and Purpose for rulemaking activity from 1968 through 1991 are no longer in the Departments files and are presumably in the state archives.

16.01. January 17, 1992 - Effective March 1, 1992

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These rules are adopted by the Commissioner of the Department of Agriculture pursuant to his authority under § 35-10-118, C.R.S. (1991 Supp.).

The purpose of these rules is to: revise the licensing procedures for commercial applicators pursuant to § 35-10-118 (2) (b), (c), and (d); revise the licensing procedures for qualified supervisors pursuant to § 35-10-118 (2)(b) and (c); adopt registration procedures for limited commercial and public applicators pursuant to § 35-10-118 (2) (b) and (c); adopt licensing procedures for certified operators pursuant to § 35-10-118 (2)(b), (2) (c) and (4) ; and adopt technician training requirements pursuant to § 35-10-118 (2), § 35-10-106 (l)(c), and § 35-10-110 (3) of the Pesticide Applicators' Act, Title 35 Article 10, C.R.S. (1991 Supp.).

Most issues encountered when developing these rules were neither exclusively factual nor exclusively policy. Consequently most issues were considered as both factual and policy.

Factual issues encountered when developing these rules include:

1. Commercial applicators are subcontracting with commercial applicators to perform pesticide applications. This activity can be divided into, two categories. First, there are subcontracts involving applications in the categories for which both commercial applicators are licensed. An example of this would be a commercial applicator licensed in agricultural weed control, but who has ground application equipment only, subcontracting with a qualified licensee applications for agricultural weed control that require application by air. Second, there are subcontracts involving applications for which the contracting commercial applicator is not licensed, but the subcontracting commercial applicator is. An example of this would be a commercial applicator licensed only in turf weed control subcontracting with a commercial applicator licensed in industrial and right of way applications for weed control in that category. Enforcement questions have arisen as to whom is responsible for such applications, i.e., the contracting applicator, the subcontracting applicator, or both.

2. A certificate of good standing from the Secretary of State will establish that an applicant for license is a bonafide business prior to issuance of such license.

3. In trying to define the level at which registration of public applicators should occur, the myriad of political subdivisions that may not need to register, nor choose to do so, while a sister subdivision may be required to do so by their use of restricted use pesticides was considered. It was decided to let each political entity determine what subdivision best described them as public applicators.

4. Expiration dates issued from the date of licensing have little meaning to the license holder. The birth date of the qualified supervisor and certified operator was chosen for the expiration date of their licenses, except for licenses issued pursuant to § 35-10-118(4).

5. The revised statute requires restricted use pesticides to be applied by a licensed qualified supervisor, licensed certified operator, or under the on site supervision of a licensed qualified supervisor. In the agricultural categories the pesticides being applied are often classified as restricted use. It is not uncommon for commercial applicators to employ individuals for short periods of time during the growing season to apply pesticides. The

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application equipment utilized often holds only one person. Therefore the individual applying restricted use pesticides from equipment holding only one person must be licensed as a qualified supervisor or certified operator. Many individuals working on this basis are licensed to use or supervise the use of restricted use pesticides in other states. Such licenses were issued pursuant to examination and/or continuing education. Because of the circumstances necessitating speedy issuance of credentials and the prior existence of similar credentials from other jurisdictions, it was the opinion of the advisory committee and the department that a certified operator's license could be reciprocal. In addition, in order to allow for emergency circumstances and still have assurance of competency, the provision for administration of an examination by the qualified supervisor so a person could apply restricted use pesticides for ten days was included.

6. When considering the requirements for continuing education the topics needed to be relevant and the opportunity to spread out the training was considered, as well as what areas were necessary to be updated every three years and how much credit was needed in each of these areas.

7. The factual issues considered when writing rules for technician training included who is a technician, the topics each type of technician should have knowledge about and be familiar with, the hours of training needed to adequately cover said topics, what is used and how the business operates, how the classroom vs. on the job training should be divided and who is responsible for the training and who can train.

Policy issues encountered when developing theses rules include:

1. Consideration of whom to hold responsible when a licensed commercial applicator is subcontracting with another licensed commercial applicator.

2. Not defining political subdivisions allows flexibility in the administration of registering public applicators.

3. In considering the continuing education requirements it was decided to allow credits vs. hours and not to assign time increments to the credits. This was done because an update in one area where there has been little change may be adequately covered in a minimum amount of time, whereas an update on another topic may require several hours to be considered adequate.

4. In relation to technician training the goal was to provide competent technicians using pesticides to assure proper application and minimization of hazards while not being overly burdensome or eliminating competition through regulation. The manner in which each business operates was also considered, i.e. the differences between an agricultural, turf, ornamental and structural business.

16.02. January 31,1992 - Effective February 1, 1992

This rule is adopted under the Pesticide Applicators' Act pursuant to § 35-10-118 and pertains to the administration enforcement of the licensing provisions authorized under Pesticide Applicators' Act.

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During the 1990 legislative session, article 10 of title 35 was repealed and reenacted. Sections 35-10-105 - 107,35-10-109- 110, and 35-10-113-116 revised the types licenses issued to pesticide applicators by the department of agriculture and manner in which they are issued. The revisions included registration by limited commercial and public applicators under certain circumstances, licensing of certified operators, and training requirements for technicians.

These rules allow the Commissioner to comply with those provisions.

The notice and hearing requirements of § 24-4-103 of the Colorado Administrative Procedures Act have been met. In accordance with the timelines established for rule making the effective date for these rules will fall after the beginning of spray season. Therefore, the immediate adoption of Part 1. - 5. is imperatively necessary for the preservation of public health, safety, and welfare.

16.03. September 17, 1993 - Effective October 30, 1993

These rules are adopted by the Commissioner of the Department of Agriculture pursuant to his authority under § 35-10-118, C.R.S. (1992 Supp).

The purpose of these rules is to: (1) set the annual licensing fee for commercial applicators pursuant to 35-10-118 (2)(d); to permit the use of a termiticide only in accordance with label directions; and to houseclean the existing rules by correcting incorrect citations, eliminate conflicting provisions, correcting misspellings, etc.

Factual issues encountered when developing the rule setting the annual license fee for commercial applicators include:

1. In 1983 the legislature repealed and reenacted the Pesticide Applicators' Act. The 1983 statute established the Pesticide Applicators' fund for the purposes of administration and enforcement of the program. It also set the licensing fee for a commercial applicator's license at $250.00.

2. In 1990 the legislature repealed and reenacted the Pesticide Applicators' Act. The current statute authorizes the Commissioner to set the amount of the license fee for a commercial applicator, business license, not to exceed $250.00 through licensing year 1991 and $350.00 thereafter.

3. The licensing fee for a commercial applicator's business license has not been raised since 1983.

4. Program costs now exceed revenues and the fund balance has been depleted.

Policy issues encountered when developing the rule setting the annual license fee for commercial applicators include:

1. The fee structure for the commercial pesticide applicator program has been carefully considered by the Department and the Pesticide Advisory Committee. After reviewing the projected shortfall and various fee increases it was decided that the most prudent course

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at this tune was to increase the annual commercial applicator business license fee $100 in order to help reduce the shortfall and continue the program services.

2. The remainder of the projected shortfall will be addressed by program cost reductions.

3. In addition the Department and the Advisory Committee will continue to study the program's fee structure for further refinement and recommendations.

Factual issues encountered when developing the rule pertaining to the use of termiticides include:

1. Under Section 2 (ee) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) a pesticide application may be made at less than labeled rate as long as the label does not prohibit such an application and it is made in accordance with other label directions.

2. Many applications made for the control of termites are made at less than the labeled rate. This is especially true for pretreat applications.

3. To date there is no scientific data to support the efficacy of using a termiticide at less than the labeled rate.

4. Consumers, especially pretreat customers, may be purchasing termite control, assuming a protection has been afforded them when in actuality very little termiticide has been applied.

5. Efficacy studies at less than the current labeled rate are being performed.

6. If the studies show efficacy at less than labeled rates, then this rule will be reconsidered.

Policy issues encountered when developing the rule pertaining to the use of termiticide include:

1. The issue of applications at less than the rates stated on any label was considered. It was decided to limit the rule to termiticide applications only.

2. The issue is one of consumer protection and the potential for fraudulent applications if the 2 (ee) policy is continued as it relates to termiticides.

3. The Federal Insecticide, Fungicide and Rodenticide Act clearly authorizes a state to be more restrictive than the Act, but not less. This rule is more restrictive and falls well within statutory authority.

Factual issues encountered when developing the housekeeping measures included incorrect citations, misspellings, conflicting provisions and unclear provisions exist in the current rules.

Policy issues encountered when developing the housekeeping measures included the necessity of maintaining correct rules.

16.04. July 28, 1994 - Effective September 30, 1994

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These rules are adopted by the Commissioner of the Department of Agriculture pursuant to his authority under § 35-10-118, C.R.S. (1993 Supp.)

The purpose of the rules is to: create a mixer/loader category pursuant to 35-10-118 (2) (b); clarify the qualifications for licensing in the wood destroying organisms category pursuant to 35-10-118 (2) (b); clarify the definition of technician to include flaggers for purposes of technician training; and correct the terminology in the requirements for licensing as a qualified supervisor/certified operator.

Most issues encountered when developing these rules were neither exclusively factual nor exclusively policy. Consequently most issues were considered as both factual and policy.

Factual issues' encountered when developing these rules include:

1. It is not unusual for commercial applicators licensed in the agricultural categories, especially aerial applicators, to employee individuals who only mix and load the pesticides being used. These employees do not evaluate pest problems, make recommendations, sell services, etc. Many of the pesticides used by applicators licensed in the agricultural pest control categories are restricted use pesticides. This means the employee can only handle these pesticides if they are licensed as a certified operator or qualified supervisor, or if a licensed qualified supervisor is on site. In order to obtain a license an individual must successfully complete a general examination and category specific examinations. The category specific examinations include questions on pests, hosts, pest control and various subjects related to evaluating pest problems, making recommendations, selling services, etc. Since mixer/loaders do not perform these functions, and will not perform them, the category specific examinations are difficult for them to successfully complete and irrelevant to their job. The subjects on the general examination cover the topics in which an individual acting strictly as a mixer/loader would need to be knowledgeable.

2. To control termites a structure may be treated prior to completion or a finished structure may be treated. The skills and knowledge needed to perform these two different types of applications are vastly different. The language setting out the experience for licensing in the wood destroying organism control category was nebulous. An individual with only pre-treat experience and knowledge could be licensed to perform any wood destroying organism control application whether or not he had any post-treat experience. Only a few commercial applicators perform termite applications because of the cost of the equipment and specialization of the service.

3. The code of federal regulations associated with the Federal, Insecticide, Fungicide and Rodenticide Act (FIFRA) has been amended to include expanded worker protection regulations. These regulations cover all handlers including flaggers.

Policy issues encountered when developing these rules include:

1. In relation to establishing a new mixer loader category we had to consider how to comply with both the letter and the intent of the statute without being unduly burdensome on the industry.

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2. In relation to defining more specifically the experience needed for licensing in the wood destroying organism category the potential for restraint of trade had to be considered.

16.05. January 19, 1995 - Effective March 2, 1995

This rule is adopted by the Commissioner of the Department of Agriculture pursuant to his authority under § 35-10-118, C.R.S. (1994 Supp.)

The purpose of the rule is to correct a typographical error in the existing rule. Factual issues encountered when developing these rules include:

A typographical error was discovered in the Part 9.02 (b) of the rules. This rule as published states “Such field experience shall have been obtained within the five years immediately preceding the applicant's application for licensing as a qualified supervisor.

Policy issues encountered when developing these rules include:

To be consistent with Part 9.02 and with the original intent of the rule the error needed to be corrected.

16.06. July 23, 1996 - Effective August 30, 1996

STATUTORY AUTHORITY: These emergency rules are adopted by the Commissioner of the Colorado Department of Agriculture (the “Commissioner”) under the authority of §35-10-118 (2) and (9) C.R.S. (1995), and in accordance with §24-4-103 (6) C.R.S. (1988, 1995 Supp.).

STATEMENT OF REASON: The reasons for adopting these emergency rules is to: (1) create a sub-category for the use of the pesticide metam-sodium to control roots in sewers pursuant to §3510-118 (2)(b), and set out the standards and criteria associated with the establishment of such a sub-category; (2) repeal Part 8.04 and amend related language in the existing rules concerning mixer/loaders in order to be consistent with amendments to the Pesticide Applicators' Act derived from Colorado Senate Bill 96-086, which became law effective July 1, 1996; and (3) make miscellaneous technical amendments to conform the existing rules to the amendments hereby adopted.

On June 23,1996, the Commissioner ordered that proceedings be instituted for the adoption of new permanent rules and regulations pertaining to these matters, and notice was published on July 10,1996, in accordance with applicable law, for a hearing on such proposed new permanent rules and regulations to be held on July 30, 1996, at 9:00 a. m., at the Department of Agriculture, Division of Plant Industry Testing Room, 700 Kipling Street, Suite 4000, Lakewood, Colorado 80215-5894.

NEED FOR EMERGENCY RULES: These emergency rules pertaining to the creation of a sub-category for the use of metam-sodium to control roots in sewers, the standards and criteria associated with the establishment of such a sub-category, and the technical amendments in furtherance thereof, are made necessary by action of the U.S. Environmental Protection Agency (“EPA”). The EPA recently classified the pesticide metam-sodium as a restricted use pesticide when used to control roots in sewers. Applicators wishing to purchase or use this pesticide must now be certified to do so. I is imperative that these emergency rules be adopted in order to permit the Colorado Department of Agriculture, Division of Plant Industry to license and regulate the activities of pesticide applicators who wish to use metam-

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sodium for root control in sewers pending the conclusion of the formal rule-making proceedings initiated by the Commissioner for the adoption of permanent rules and regulation on this subject.

The emergency rules pertaining to the repeal of Part 8.04 and the amendment of related language in the existing rules concerning mixer/loaders, and the technical amendments in furtherance thereof, are necessary to conform the existing rules and regulations with amendments to the Pesticide Applicators' Act derived from Colorado Senate Bill 96-086, which became law effective July 1,1996, pending the conclusion of the formal rule-making proceeding initiated by the Commissioner for the adoption of permanent rules and regulations on this subject.

Based on the foregoing, the Commissioner hereby finds that immediate adoption of these rules is imperatively necessary to comply with state law and federal regulations, and for the preservation of public health, safety and welfare and that compliance with the formal rule- making requirements of §24-4-103 would be contrary to the public interest.

EFFECTIVE DATE: These emergency rules will be effective on the date adopted by the Commissioner, and shall remain in effect for ninety (90) days thereafter.

16.07. September 25, 1996 - Effective November 30, 1996

Statutory Authority: These permanent rules are adopted by the Commissioner of the Colorado Department of Agriculture pursuant to his authority under C.R.S. § 35-10-118(2), (4) and (9) (1995, as amended).

Purpose: The purpose of these permanent rules is to: (1) create a sub-category for the use of the pesticide metam sodium to control roots in sewers pursuant to C.R.S. § 35-10-118(2)(b), and set out the standards and criteria associated with the establishment of such a sub- category: (2) repeal Part 8.04 and amend related language in the existing rules concerning mixer/loaders in order to be consistent with amendments to the Pesticide Applicators' Act derived from Colorado Senate Bill 96-086, which became law effective July 1, 1996; (3) revise the recordkeeping requirements Part 6.03(e);(4) clarify the language in Part 2.49 concerning the issuance of reciprocal licenses; and (5) make miscellaneous technical amendments to conform the existing rules to the amendments hereby adopted and to correct grammatical errors.

Basis: Some of the issues encountered in the promulgation of these permanent rules were neither exclusively factual nor exclusively of a policy nature. Consequently, some issues were considered as both factual and of a policy nature.

The factual and policy issues encountered in adopting these permanent rules include:

1. Factful Issue(s): The U.S. Environmental Protection Agency (EPA) recently classified the pesticide metam sodium as a restricted-use pesticide when used to control roots in sewers. Applicators wishing to purchase or use this pesticide must now be certified to do so.

   Policy Issue(s): This classification by the EPA has made it necessary to create a new sub- category of aquatic applicators for the application of metam sodium for root control in sewers. In establishing this sub-category, consideration had to be given to complying

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with both the letter and the intent of the Pesticide Applicators' Act (the Act) without being unduly burdensome on the industry or the agency.

2. Factual Issue(s): Colorado SB 96-086 amended C.R.S. 3510-103(15)(a) (II) of the Act to amend the definition of “technician” to include individuals who exclusively mix and/or load pesticides. This makes the mixer/loader sub-category in the agricultural classification unnecessary.

3. Factual Issue(s): Part 6.03 of the existing rules requires licensed entities to identify the pesticide product they are using. Recording the EPA registration number of the pesticide product is a permitted method under the existing rule, but not required.

   Policy Issue(s): Generally, the EPA registration number can more accurately identify a product than the manner in which a licensee may choose to describe the product name, and under the adopted rule, is a required method of identifying the pesticide.

4. Factual Issue(s): Part 2.49 describes the procedure by which an individual certified or licensed by another jurisdiction can obtain a Colorado license as a certified operator issued through reciprocity. The existing language in this part does not make it clear that the issuance of such a license can only be done through re-application, since the Colorado Department of Agriculture is not the original issuing agency. The adopted rule clarifies this point.

16.08. March 13, 1997 - Effective April 30, 1997

Statutory Authority:

These permanent rules are proposed for adoption by the Commissioner of the Colorado

Department of Agriculture pursuant to his authority under the Pesticide Applicators' Act (the “Act”) at C.R.S. §§ 35-10-118(2), (5) and (9) (1995, 1996 Supp.).

Purpose:

The purpose of these proposed permanent rules is to: amend the definition of the term “abut”; conform the rules and regulations to the amended statutory definition of the term “limited commercial applicator”; repeal Section 2.42; to clarify the language in Section 2.45 regarding when a qualified supervisor may be licensed as a certified operator in an additional category without payment of the application fee for the certified operator's license; consolidate the turf categories into a single category under the ornamental classification, and modify the continuing education requirements therefor; consolidate the ornamental categories into a single category under the ornamental classification, and modify the continuing education requirements therefor; expand, under certain circumstances, the customer notification requirements for pesticide applications at a commercial site; create a new category named “Interior Plant Pest Control” within the structural pest control classification, and establish standards therefor; establish requirements for the identification of service containers; amend the requirements for registration of pesticide sensitive persons pertaining to the statement of proof of medical justification, the frequency for submitting such statement, and payment of the administrative fee for registration;

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create a Part 15 for rules and regulations pertaining to enforcement, and establish a definition for the phrase “substantial danger or harm to public health and safety, to property, or to the environment” as required by Senate Bill 96-086, which amended C.R.S. § 35-10-121 by adding subsection (2.5); and make miscellaneous technical amendments to conform the existing rules to the amendments hereby proposed.

Factual and Policy Issues

The factual and policy issues encountered in the proposal of these permanent rules are as follows:

(1). Senate Bill 96-086 amended C.R.S. § 35-10-112(l)(c), which deals with requirements for notifying persons who reside on property abutting the site of a pesticide application. The amendment provides that two property sites that would be considered abutting but for the fact that they are separated by an alley are for the purposes of this section to be deemed abutting. This statutory change requires amendment of the term “abut” in Section 1.02(a) of the rules in order to make it consistent with this statutory amendment.

(2). Senate Bill 96-086 amended C.R.S. § 35-10-112 (l)(a), which pertains to the registry of pesticide-sensitive persons. This amendment requires that the proof of medical justification for inclusion on the registry be made by a physician licensed in the state of Colorado, that it be updated every two (2) years, and that the administrative fee for registration be repealed. These statutory changes require conforming amendments to the following sections of the rules: Sections 1.02(e), 12.01, 12.04, and 12.05.

(3). Senate Bill 96-086 amended C.R.S. § 35-10-103(8), which defines the term “limited commercial applicator.” This amendment expands the definition of the term to include persons engaged in applying pesticides in the course of conducting a business on property leased, as well as property owned by the person or the person's employer. This statutory change requires a conforming amendment in Section 2.18 of the rules.

(4). Section 2.42 of the rules is repealed because it was needed only for a limited time in order to facilitate the administrative transition from the previous licensing system to the current one.

(5). Section 2.45 of the rules is amended only to clarify its provisions. No substantive change to this rule is intended.

(6). The ornamental classification now in effect has the following categories: Turf Insect Control, Turf Plant Disease Control, Turf Weed Control, Ornamental Insect Control and Ornamental Plant Disease Control. The three turf pest control categories all pertain to working on one type of site, namely turf, except for weed control in ornamental beds. The two ornamental categories cover a wide range of sites, but labels for pesticide products used on these types of sites often state the site as “ornamentals” and do not distinguish between various hosts such as locust, elm, etc. A qualified supervisor or certified operator working in any of the current turf categories needs to be aware of symptoms indicative of environmental, cultural practice and pest stresses in the related turf categories in order to properly diagnose a problem and recommend the correct solution.

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This also applies to a qualified supervisor or certified operator working in any of the current ornamental categories.

The proposed amendments to Section 9.01 of the rules consolidates the three turf categories into a single category, and consolidates the two ornamental categories into a single category. This consolidation will require persons who wish to be licensed in either of these categories to possess a broader range of knowledge covering what was previously divided into separate categories. Thus, one examination for each of the two consolidated categories (i.e., turf and ornamental) will be given rather than the multiple examinations currently given for each of the five separate categories described above.

Also, because of the broader range of knowledge required for each of these consolidated categories, the continuing education requirements for these consolidated categories will be increased from one to two credits. This change is reflected in the amendments to Section 4.01, which will be phased in beginning January 1, 1998.

These proposed amendments to Section 9.01 require the technical conforming amendments that are proposed for Sections 9.02 and 9.03, and 5.7 through 5.21, inclusive.

(7). Senate Bill 90-086 amended C.R.S. § 35-10-112(2) (d) by adding sign posting notification requirements where a commercial or limited commercial applicator makes a pesticide application to a commercial site when the owner or agent of the owner is not present at the site. The proposed amendments to Section 9.04 of the rules are intended to broaden the notification requirements of that rule (which are unrelated to the statutory sign posting requirements) to specifically address the situation where a pesticide application is made to a commercial site when the owner or agent of the owner is not present.

(8). The number of interior plants in public structures has gradually increased over the last twenty years. Over time, more and more caretakers of these interior plants have come under the regulation of the Colorado Department of Agriculture with respect to the application of pesticides. These interior plant caretakers have had to qualify for licensing in categories that are not entirely applicable to the circumstances in which they work (e.g., Ornamental Insect Control and Ornamental Plant Disease Control, which cover exterior plants). The addition of an Interior Plant Pest Control category will correct this situation. It will also provide the Colorado Department of Agriculture and the public with a greater assurance that the qualified supervisors, certified operators and technicians working in this category are qualified to do so.

Consideration was given to the placement of this category in either the ornamental classification or the structural pest control classification. Since pesticide applications to indoor plants are made inside buildings and other structures, this new category was placed in the structural pest control classification because the hazards related to such applications and the precautions that need to be taken when making them are more closely related to that classification than the ornamental classification.

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The addition of this new category is reflected in the proposed Section 10.01(8) of the rules. The amendments to Sections 10.03 and Sections 5.25 through 5.28, inclusive, are technical amendments made to conform those rules to the addition of this new category.

(9). Under certain circumstances licensees under the Act transfer pesticides into smaller containers in order to perform or facilitate its application. For example, a structural pest control operator may purchase a 10 gallon pail of rodent bait and provide each of his technicians with a one gallon container of the bait taken from the 10 gallon container. Additionally, certain application equipment is of a size that can be carried and handled by one individual, e.g., a one gallon sprayer used to spot treat weeds in turf. The industry refers to these containers as “service containers.” At one point in time the EPA had an operating policy which detailed the requirements for marking service containers so the material in it could be identified. EPA's operating policy was rescinded and is no longer in force.

A new rule requiring the identification of service containers is necessary and appropriate for the public's health, safety and welfare now mat the EPA's operating policy has been rescinded. In establishing the requirements for marking service containers, consideration had to be given about providing information essential for safety and welfare without being unduly burdensome on the industry, and without conflicting with existing federal regulations. This new rule appears in the proposed Section 11.08.

(10). Senate Bill 96-086 amended C.R.S. § 35-10-121 by adding subsection (2.5), which relates to enforcement proceedings brought under the Act. This subsection (2.5) requires the Colorado Commissioner of Agriculture to define the phrase “substantial danger or harm to public health and safety, to property, or to the environment.” In response to this statutory amendment, the rules are amended to add a Part 15. Enforcement, and to define the foregoing phrase in proposed Section 15.01.

16.09. February 11, 2004 - Effective May 3, 2004

Statutory Authority

The amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture pursuant to his authority under the Pesticide Applicators' Act, (the “Act”). §§ 35-10-118(2)(a)(b)(c), (5), and (9), C.R.S.

Purpose

The purpose of these proposed rule amendments is to: In Part 1, add the definition of “in the possession of to clarify the proposed rule 7.06, that requires the applicator to have label information at the site of any pesticide application; in Part 2, amend Rule 2.10 by requiring all categories to have on file at the time of submission of an application for renewal of a license, evidence of liability insurance which is in force at the time of the application; amend Rules 2.15 and 2.16 by adding a requirement for a written provision in contracts that incidentally require a pesticide application, that notes that a licensed subcontractor will be used for any pesticide application the primary contractor is not licensed for; in Part 4, delete Rule 4.1 that expired on January 1, 1998 and remove language from the version of Rule 4.1 (h) noting the effective date of the current Rule; delete the version of Rule 4.5 that expired on January 1, 1993 and remove

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language from Rule 4.5 noting the effective date of the current Rule; in Part 5, amend Rule 5.1 by clarifying that the definitions outlined in 5.1 apply to all technician training outlined in Part 5 of the Rule; amend Rule 5.1(b) by adding the definition of a “new hire experienced technician” and “on-going experienced applicator technician” to clarify training differences outlined in Part 5; amend Rules 5.5, 5.10, 5.15, 5.20, 5.23, and 5.27 to clarify that training requirements outlined in each section pertain to on-going experienced applicator technicians and that on-going training must be conducted each year after the first season of experience; amend Rules 5.6,5.11,5.16, 5.21, 5.24, and 5.28 to clarify that the training requirements outlined in each section pertain to new hire experienced technicians; amend Rules 5.9(c) and 5.18(c) to clarify the amount of on the job training hours that must be conducted by a licensed qualified supervisor or certified operator; in Part 6, amend Rule 6.02 to require limited commercial and public applicators to maintain records of all pesticide applications they make; amend Rule 6.03 by adding a requirement that the record of application must have the name of the person(s) who made the application; amend Part 6 by adding a new Rule 6.04 requiring any applicator performing wood destroying insect control for termites to keep and maintain records in addition to those outlined and proposed in Rule 6.03; in Part 7, amend Rule 7.02 by adding requirements for commercial and public applicators to identify their ATV/off-road application equipment; amend Rule 7.02 by adding requirements for public applicators to identify their application equipment; amend Part 7 by adding a new Rule 7.06 to require that a copy of the label for the pesticide in use be in the possession of the applicator at the site of application; in Part 8, amend Rules 8.01 (f) and (g) to clarify that additional licensure in the turf and ornamental categories is required when performing applications in forest or rangeland areas that come within 50 feet of residential or commercial structures; amend Rule 8.01(j) by deleting the language “in programs” and “large scale” to clarify that the Public Health category applies to any pesticide application performed for disease vector control; in Part 11, amend Rule 11.08 to require the name of the applicator in addition to the existing service container labeling requirements; in Part 13, amend Rule 13.04 to clarify that notification signs must be posted within multi-unit residential and commercial properties in a conspicuous manner to prevent children or adults from entering a treated area; and make miscellaneous technical amendments to conform the existing rules to the amendments hereby proposed.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1) Amendments and additions being made in Parts 1,2,4, 5, 6 and 8 are necessary to correct and clarify existing language, delete out dated and irrelevant language, and correct and clarify ambiguous language to reflect the regulatory intent of the existing licensure, business, record keeping, and training requirements.

2) A new Rule is proposed in Part 6 to require the signature of the applicator on the service record to help the CDA identify the technician, certified operator, or qualified supervisor responsible for each application during investigations.

3) In the last 10 years the termite activity in Colorado has increased. A high level of knowledge and experience in building construction, treatment techniques, and termite biology is needed when performing these applications. Since these applications are made in areas where the consumer can not verify the quality of the application and consumers generally do not possess the knowledge to know the correct steps and procedures to eradicate or control a termite infestation, it is easy for commercial applicators to defraud the consumer. The proposed Rule 6.04 will require applicators to

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record information specific to termite applications that will allow the CDA to confirm that all treatments were performed to label requirements and industry standards.

4) In recent years the Pesticide Application industry has begun using All Terrain Vehicles (ATV's) to perform applications in areas that are inaccessible to standard application vehicles. Under the current Rule 7.02, these ATV's meet the specifications that require the vehicle to be identified, but due to their size applicators have been unable to comply. The proposed Rule addresses this issue and modifies the equipment identification requirements so applicators can identify their equipment, which will ensure the public and the CDA can identify these applicators.

5) Currently under Rule 7.02, public applicators are not required to identify their application equipment. Each year the CDA receives a number of inquiries and complaint calls pertaining to public entities that are performing pesticide applications that the CDA office staff must research to determine jurisdictional authority. A new Rule is proposed to require public applicators to identify their application equipment to enable the public and CDA to easily identify the public entity in the field, which will reduce public concern and minimize the CDA staff time required to identify currently registered public applicators.

6) Pine Beetle eradication has become a priority for the State of Colorado. As the Pine Beetle infestation has spread, more applications are being performed on private property where the trees are no longer being maintained as part of a forest, but rather as ornamental trees for aesthetics. Applications performed around residential and commercial structures create a higher likelihood that persons or pets may come in contact with the treated area. Ornamental applicators are trained in the precautions needed when making applications around structures, and under 35-10-112 of the PAA are required to post notification at the time of an application. The current Forest category does not address the hazard identification and safety precautions needed when performing pesticide applications in close proximity to inhabited structures. An amendment to Rule 8.01 (f), Forest Pest Control, is proposed to require applicators to hold the appropriate ornamental license, which addresses the safety, hazard, and notification requirements needed when performing applications close to an inhabited structure. The Rangeland Pest Control category, 8.01(g), has the same safety concerns when pesticide applications are made around inhabited structures for insect or noxious weed control. The Rangeland category requirements will be identical to the Forest category except that licensure in the Turf category will be required.

7) Rule 11.08 currently requires that any service container be labeled to identify the contents within. Since these service containers are in many cases left at the customer's residence (i.e.: rodent bait stations) or can be inadvertently left behind or left unattended by an applicator, the CDA is proposing an amendment to Rule 11.08 that will require the name of the licensee on the label. In case of an emergency this will provide the name of the licensee so pertinent information for the unattended product (i.e.: labels and Material Safety Data Sheets) can be obtained and the responsible licensee can be quickly contacted to take appropriate remedial action.

8) Currently turf and ornamental applicators are only required to post a notification flag at each entryway to a property regardless of its size or the number of buildings on it. Each

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year the CDA receives calls from pesticide sensitive individuals or concerned parents complaining of turf or ornamental applications that have been performed at their apartment complex and their child or pet, unbeknownst to them at the time, entered a treated area. The current rule in Part 13 does not specify that a flag(s) must be posted within the common areas of multi-unit residential or commercial properties. The proposed amendment to Rule 13.04 will help ensure that any person entering a common area that has been treated with pesticides will be able to see a flag notifying them of that application.

16.10. October 19, 2006 - Effective January 1, 2007

Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture pursuant to his authority under the Pesticide Applicators' Act, (the "Act"). §§ 35-10-118(2)(a)(b)(c), (5), and (9), C.R.S.

Purpose

The purpose of these proposed rules is to make conforming amendments is to address statutory changes made to the Pesticide Applicators' Act as a result of House Bill 1239, The Pesticide Applicators' Act Sunset Review Pesticide Applicators' Bill, and House Bill 1274, The Pesticide Applicators' Act Pesticide Private Applicators License Bill. The purpose of the proposed Rules is to:

- Make miscellaneous technical amendments to conform the existing rules to the amendments proposed;
- Add language to reinstate an pesticide applicator license within 180 days;
- Outline the private applicator examination and licensure requirements and provisions;
- Address examination security provisions for commercial and private applicators;
- Create continuing education requirements as it pertains to private applicators;
- Specify recordkeeping requirements for commercial, registered limited commercial, registered public applicators and licensed private applicators;
- Clarify the pesticide storage requirements of commercial applicators, registered limited commercial applicators, limited public applicators, and private applicators;
- Specify pesticide sensitive notification requirements and provisions that apply to turf and ornamental applicators vs. structural applicators;

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

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1) House Bill 1274 amended C.R.S. § 35-10-104 to expand the authority of the Colorado Department of Agriculture to regulate the use of pesticides by all persons in the State of Colorado. As a result of H.B. 1274, amendments and additions made in Parts 2, 3, 4, 5, 6, 7, 8, 11,12, and 13 and associated Rules are necessary to clarify what Part and Rule applies to "registered' or "licensed" persons and/or entities in the State of Colorado. Other changes include spelling and miscellaneous technical amendments to conform the existing rules to the proposed amendments.

2) House Bill 1274 amended C.R.S. § 35-10-103 to add the definition of a private applicator, which defines a private applicator as a person who "uses or supervises the use of a pesticide for producing an "agricultural commodity." C.R.S. § 35-10-114.5 requires any person who uses or supervises the use of a restricted use pesticide shall possess a valid private applicator license issued by the Commissioner. There is no State definition of "agricultural commodity" for CDA to refer to when it must determine if a private applicator is raising an agricultural commodity prior to certifying and issuing a private applicator license. CDA needs to verify that the license is being obtained and will be used in the manner intended. Upon request from EPA Region VIII, Part 1 was amended to create Rule 1.02 (k), which defines an "agricultural commodity". The definition will help clarify for CDA and applicants that a private applicator must be engaged in the production of an "Agricultural Commodity", as defined, to qualify to obtain a private applicator license which will allow them to purchase, apply, and supervise the use of restricted use pesticides on property they own or lease.

3) House Bill 1239 amended C.R.S. §35-10-116(6) of the Act to give the CDA the authority to "reinstate" an applicators license, within 180 days of its expiration, on the condition that all continuing education requirements had been met prior to the expiration date. The currant language in Rule 2.46 addressed renewal requirements only. Rule 2.46 is amended by adding the licensure reinstatement provisions, outlined in C.R.S. §35-10-116 (6), for added clarity that an applicator may "reinstate" a license if certain provisions are met.

4) House Bill 1274 amended C.R.S. §35-10-115, which authorizes the CDA to begin issuing licenses to private applicators on and after January 1, 2007 and by adding a new statutory provision, C.R.S. §35-10-114.5, requiring any person acting as a private applicator using or supervising the use of restricted use pesticides be licensed as a private applicator by the Commissioner. Rule 2.50 is being repealed because it created a loophole that did not allow the CDA to enforce the provisions of the Act and Rules for someone acting as a certified operator if: they were a new employee, completed the private applicator exam issued by EPA Region VIII, their employer notified the department within 3 days and they completed the certified operator test within 14 days from their initial employment. EPA Region VIII will no longer be issuing private applicator licenses after January 1, 2007 and the CDA no longer wants to continue to allow a person to act in the capacity of a certified operator, which allows applications of RUPs in categories their employer is licensed in, without taking a closed book test, verifying that they have core knowledge of laws and regulations, applicator safety, public safety, environmental protection, use of pesticides, and pesticides and their families, to apply a "higher risk" pesticide in the general public.

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5) House Bill 1274 amended C.R.S. §35-10-115, which authorizes the CDA to begin issuing licenses to private applicators on and after January 1, 2007. A new statutory provision, C.R.S. §35-10-114.5, requires any person acting as a private applicator using or supervising the use of restricted use pesticides be licensed as a private applicator by the Commissioner. Under H.B. 1274, C.R.S. §35-10-117 (1)(a) was amended to make it unlawful for any person to perform acts that require licensure as a private applicator. C.R.S. §35-10-118 (2)(b) and (c) authorize the Commissioner adopt Rules to establish qualifications for issuance and reinstatement of any license issued under the Act. These statutory changes require conforming amendments by the creation of a new Subpart D, part 2.48 through 2.58, which addresses private applicator licensure requirements, submission of information requirements, examination requirements, fee requirements, renewal and reinstatement provisions, supervision, licensure upgrades and reciprocity.

6) Under C.R.S. §35-10-118(2)(c) the Commissioner is authorized to adopt Rules for any disciplinary actions authorized under Title 35, Article 10. Part 2, Subpart E, "Licensure Actions, Suspension, Denial, Revocation", Rule 2.59, was existing language that was moved from Part 7 of the Rules. This Rule outlines actions that constitute grounds for denying, suspending or revoking a business entity's license or registration or an individual's license. This section was moved from Part 7 to Part 2, which outlines business licensure and registration requirements and individual license issuance and renewal requirements, for clarity.

7) Add language to coincide with H.B. 1239, C.R.S. §35-10-118(3)(c), by adding clarifying language stating the commissioner or "his or her designated administrator shall" administer a general examination to qualified supervisors and certified operators and add "private applicator" to the current examination administration provisions set forth in Rule 3.1 and 3.2 to include private applicators as a result of H.B. 1279.

8) Repeal Rule 3.3, to remove unnecessary language from the Rule pertaining to when the examinations will be administered by the Commissioner.

9) Part 3, Rule 3.8, was amended by adding language to the existing exam security provisions, creating a section (a) pertaining to commercial applicators and a new section (b) pertaining to private applicators. Rule 3.8(a) outlines examination security provisions to prevent the content of CDA's closed book commercial examinations from being disseminated by any person. Old language stated that an applicant or licensee could not remove examination material, but did not clearly make it a violation if an applicant cheated on the exam by bringing in outside information to reference during the test. New language has been added to make this a violation for any applicant or licensee.

   Rule 3.8(a) currently states that an applicant or licensee shall not cause the "nature of" any exam question to be disseminated. It can be argued that any person that has ever taken an exam and then does pre-certification training for his or her company may unavoidably disseminate the "nature of" an exam question. The CDA feels the intent of Rule 3.8 was to prevent blatant dissemination of examination questions. Therefore, the words, "the nature of" were removed to more clearly define that an exam question or answer may not be disseminated to any person.

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The private applicator exam is an open book test, which is not currently required to be proctored. Rule 3.8(b), outlines private applicator exam security provisions and was created to address circumstances that have been brought to the CDA's attention that, in some instances, a private applicator has had someone else fill out their test answer sheet (a spouse or family member) or may have attended a workshop where the administrator blatantly gave them the answers to the exam. This Rule is established to make it a violation for any person to disseminate the answers of the private applicator exam to an applicant or licensee or to allow someone other than the applicant or licensee to fill out the examination form.

10) Amend Part 4, Subpart A's title, "General Continuing Education Requirements for Qualified Supervisor and Certified Operator" to clarify that subpart A pertains only to qualified supervisors and certified operators.

11) Amend Part 4, Rule 4.3, to wordsmith the current notification of continuing education workshop provision for clarity and in Rule 4.5 language to clarify that the continuing education provisions must cover topics from subject areas and subtopics outlined in Subparts C through I, in Part 4 of the Rules.

12) Amend Part 4, Subpart B, Rule 4.6 through 4.10, to comply with H.B. 1274, C.R.S. §35-10-116(2) and §35-10-118(5) by adding new language outlining continuing education requirements pertaining to private applicators. Subpart B outlines the number of continuing education credits needed, course approval requirements, course notification provisions, workshop sponsor reporting requirements, and that the continuing education provisions must cover topics from subject areas and subtopics outlined in Subpart C through H, in Part 4 of the Rules.

13) Amend Part 6, Records, of the Rules by the creation of a Subpart A and Subpart B.

Subpart A outlines the current recordkeeping requirements for commercial, registered limited commercial and registered public applicators.

Pursuant to H.B. 1279, C.R.S. 35-10-111, which added recordkeeping requirements for private applicators that use restricted use pesticides (RUP), the CDA has amended Part 6 by creating a Subpart B, Rule 6.05, which requires private applicators to maintain records of RUP applications, the elements of such records are currently required by the USDA under the Code of Regulations, 7 C.F.R., Part 110 (2006), which C.F.R. is referenced in Rule 6.05. C.R.S. 35-10-111 requires records to be kept for a minimum of 3 years, 1 year more than the USDA requirement, which is noted in Rule 6.05.

14) Part 7; amend Rule 7.02, by changing "licensee" from singular to plural to encompass private applicators. Clarifying statement.

15) Part 7, amend Rule 7.05 by adding language to exempt private applicators from this provision which requires licensed commercial, registered limited commercial, and registered public applicator employees to have a copy of the pesticide label at the site of application in case a question pertaining to the use of product, PPE, precautions, etc. come up during the course of the application. Adding this requirement for private

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applicators is not needed since all mixing, loading, and use are conducted on the private applicator's property and the pesticide product label should be on the property site for reference when questions arise.

16) Amend Part 11, with the creation of a new Subpart A and Subpart B to clarify pesticide storage requirements for commercial applicators, registered limited commercial applicators, registered public applicators, and private applicators.

Subpart A, Rules 11.01 through 11.08, is existing language that outlines storage requirements and equipment identification for commercial, registered limited commercial, and registered public applicators.

Subpart B, is new language that is specific to licensed private applicators. H.B. 1274, C.R.S. 35-10-117(1)(i) makes it a violation of the Act to store a pesticide in a manner inconsistent with label directions. Subpart B, Rules 11.09 through 11.11, reiterates this statutory provision, due to the fact that the pesticides licensed private applicators will be storing may be restricted use pesticides, by stressing that pesticides should be stored in a manner as to prevent an unreasonable risk to persons, property or animals, that they are stored in a manor that prevents damage to the container or label, and if stored in an outdoor pesticide storage area that the pesticide is protected from the elements to prevent the risk of damage to the container or label and avoid the creation of an unreasonable risk to persons, property, or animals.

17) H.B. 1239 amended C.R.S. 35-10-112 by expanding the notification of pesticide sensitive individuals to structural pest control operators. Part 12 of the Rules was amended to create a new Subpart A and Subpart B.

Subpart A, Rule 12.06 and 12.07, retains existing language pertaining to turf and ornamental notification requirements.

Subpart B, Rule 12.08 through 12.10, outlines the structural notification requirements for giving prior notice, methods that notice may be given, instructions if notification attempts fail, and emergency and specific product formulations that are exempt from the notification provision, created under H.B. 1239 and allowed under C.R.S. 35-10-112(2)(e) of the Act.

16.11. August 12, 2008 – Effective September 30, 2008

Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Pesticide Applicators' Act (the "Act"), §§ 35-10-118(2)(a)(b)(c), (4), (5), and (9), C.R.S.

Purpose

The purpose of these proposed rules is to:

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1. Amend Rule 2.12 and 2.30 to define adequate supervision by establishing a qualified supervisor to certified operator/technician ratio.

2. Amend Rule 2.32 to clarify that any person who uses any pesticide without supervision while employed by a commercial, registered limited commercial or registered public applicator, must be licensed as a qualified supervisor.

3. Amend Rule 2.49 to clarify that licensed private applicators may only apply restricted use pesticides for the production of an agricultural commodity.

4. Amend Rule 2.59 clarify that an individual licensed in another jurisdiction outside Colorado may become licensed as a private applicator without examination.

5. Amend Rule 9.04 to clarify turf and ornamental notification provisions when making applications to multi-unit residential units when no on-site management person is present.

6. Create a new Rule 15.02 ad 15.03 to clarify that any person using a restricted use pesticide must be licensed as a qualified supervisor, certified operator or a private applicator.

7. Fix typographical errors, including:

   - Correct Rule 2.36 by replacing the word “retirements” with “requirements”

   - Clarify language in Rule 2.48

   - Correct Rule 2.50 by changing the stated date of license renewal eligibility from January 1, 2006, to January 1, 2007

   - Clarify Rule 8.04(f) by adding the omitted words “new hire” to the experienced technician language.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1) Rule 2.12 and 2.30 states that if a licensee’s or registrant’s business operation is so extensive that one individual cannot “adequately” supervise all pest control recommendations, soliciting, mixing and loading, and applications of pesticides, more than one qualified supervisor must be employed by the licensee. CDA has historically interpreted this as requiring at least one qualified supervisor for each seven technicians, in order to ensure that s/he has the time and ability to provide the necessary on-site guidance and respond to an accident involving a pesticide spill posing a threat to health or the environment. Under the current Rule, which does not mandate a specific ratio of qualified supervisors to technicians, CDA has observed commercial applicators employing as many as 40 technicians in multiple business locations under the supervision of one qualified supervisor.

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CDA is proposing to amend Rule 2.12 and Rule 2.30 to increase the maximum number of technicians that a qualified supervisor may supervise to fifteen (15), of which no more than eight (8) may be unlicensed technicians and clearly state that a qualified supervisor must be available while any technician is using a pesticide.

2) The current Rule 2.32 does not clearly state that any person working for a commercial, registered limited commercial or registered public applicator, must be licensed as a qualified supervisor to "use" any pesticide, as defined in Part 1.02(i) of the Rules, without supervision.

3) There have been questions as to the scope of pesticide use authorized under a Private Applicator license. CDA is proposing to amend Rule 2.49 by adding language to clarify that, consistent with EPA's interpretation of FIFRA, it is a violation of the PAA to use a private applicator license to use restricted use pesticides for other purposes than raising an "agricultural commodity," as that term is defined in Rule 1.02(k).

4) Rule 2.59 is the provision that allows qualified out-of-state licensed private applicators to reciprocate their license without having to take the Colorado private applicator exam. As currently phrased, however, this Rule states that a private applicator from another state may "perform" restricted use pesticide applications in Colorado without holding a Colorado license. That conflicts with § 35-10-114.5, C.R.S., which requires any Private Applicator using restricted use pesticides to have a Colorado license. The requirement in Rule 2.59 was intended to be similar to the provision for qualified supervisors and certified operators in Rule 2.48.

   CDA, therefore, is proposing to amend Rule 2.59 to correctly state, "An individual certified or licensed by another jurisdiction outside Colorado as a private applicator may obtain a Colorado private applicator license without passing an examination..." and amend Rule 2.48 to make the language of the two provisions consistent.

5) Rule 9.04 (a) and (b) requires an applicator to leave a written statement at the time of application that a pesticide has been applied stating the pesticide or pesticides applied, the date of application, and any precautionary information for each person residing on the property, and to provide this same written statement to the owner of the site or agent of the owner of the site if s/he is not present. The current rule does not clearly address notification of residents of multi-unit residential dwellings (apartments, condos, townhomes, etc) where there is no property manager on-site.

   CDA is proposing to amend Rule 9.04 to specify the manner in which notification must be provided when making applications at multi-unit dwellings when no on-site management is present at the site.

6) Now that it has jurisdiction over all pesticide use, CDA believes it is useful to clearly state in a new Rule 15.02 that any person using a restricted use pesticide must be licensed as a qualified supervisor, certified operator or a private applicator.

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7) Rule 2.36 contains a typographical error. Rule 2.36 currently states, “the Commissioner may waive part of the experience retirements...” The Rule should read, “the Commissioner may waive part of the experience requirements.”

8) Rule 2.50 contains a typographical error. Rule 2.50 currently states, “Licenses issued by the Environmental Protection Agency prior to January 1, 2006 cannot be renewed.” The Rule should read, “Licenses issued by the Environmental Protection Agency prior to January 1, 2007 cannot be renewed”.

9) In promulgating Rule 8.04(f) CDA inadvertently omitted the words “new hire.” These words are necessary clarify that the required technician training hours outlined in 8.04(f)(1 – 4) apply to a “new hire” experienced technician, as defined in Part 5, Rule 5.1 (b)(1).

16.12. December 9, 2008 – Effective January 30, 2009

Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Pesticide Applicators' Act (the "Act"), §§ 35-10-118(2)(b), C.R.S.

Purpose

The purpose of these proposed rules is to:

Amend Rule 15.02 to clarify that any applicator technician may use a restricted use pesticide under the on-site supervision of a qualified supervisor and mix and load a restricted use pesticide under the supervision of a qualified supervisor.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

The Office of Legislative Legal Services review of the Department's recently adopted new Rule 15.02(i), which went into effect on October 1, 2008, determined that the Rule was more restrictive with respect to the supervisory requirements for the mixing and loading of a restricted use pesticide by a technician than the Act itself. The new proposed Rule 15.02(i) eliminates this conflict by distinguishing the mixing and loading of a restricted use pesticide from its actual application.

16.13. October 21, 2010 – Effective November 30, 2010

Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Pesticide Applicators' Act (the "Act"), §§ 35-10-118(2)(a) & (b), C.R.S.

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Purpose

The purpose of these proposed rules is to amend conflicting language between the Rule and statute in regards to sales technicians. All other proposed Rule amendments add clarification to the current interpretation, enforcement and intent of the existing Rules. Specifically:

1) Part 1.02 (f) is amended to add the definition of “pasture”.

2) Part 5.2 is amended to allow sales of a restricted use pesticide “under the supervision” of a qualified supervisor once all required training has been met, in accordance with statute.

3) Part 8.01, agricultural licensure classifications, are being amended to add additional examples of the types of applications allowed in each licensure category.

4) Part 12.06, ornamental notification, is being amended to more clearly explain pesticide sensitive person notification requirements.

5) A new 15.04 is being created to clearly state that a pesticide applicator must hold the appropriate category of licensure to use or supervise the use of a restricted use pesticide.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1. The CDA has found that the current licensure category descriptions do not provide a clear explanation of similar geographic areas. To help distinguish between Rangeland and Agricultural pasture areas, a new Part 1.2(f) is being created to add the definition of “pasture” is to help clarify the difference between agricultural applications vs. rangeland applications in Part 8.

2. The current language in Rule Part 5.2, that outlines technician training requirements and the allowed activities of a sales technician, conflicts with the statutory definition of a technician in § 35-10-103(15)(a)(III), C.R.S. The amendment will match the Rule with the statutory definition to allow sales of a restricted use pesticide “under the supervision” of a qualified supervisor once all required training has been met.

3. Agricultural licensure classifications are explained in Part 8.01 of the Rules. The CDA has found that the current licensure category descriptions do not provide a clear explanation of similar geographic areas, therefore making it difficult for an applicator to know what licensure category they must hold. Part 8.01 (f), (g) and (i), which are the Forest Pest Control, Rangeland Pest Control and Industrial and Right-of-Way Pest Control licensure categories have similar geographic and landscape features, but are inherently different based on the site of application and the types of applications occurring in each area. Part 8.01 (f), (g) and (i) are being amended to add additional examples of the types of geographic or landscape features found in each of these categories to provide additional guidance to pesticide applicators on what category they must carry to perform applications in these areas.

4. § 35-10-112(1)(c)(I), C.R.S. and Part 12.06, ornamental notification, currently state that a pesticide sensitive person must be notified of “any” turf or ornamental application occurring to an

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abutting property. Each separate application, in accordance with § 35-10-111, C.R.S., record-keeping requirements, requires a separate record be kept for each separate application. In situations where two abutting properties are being treated on the same day, the CDA has interpreted that the notification requirement that “any” application would require the applicator to inform the pesticide sensitive person of each separate application taking place. Part 12.06, ornamental notification, is amended to more clearly state that a pesticide applicator must notify the pesticide sensitive person of each and every location where pesticide applications are being made and in a manner that the pesticide sensitive person can identify which abutting property is being treated to take the necessary precautions to avoid adverse effects to themselves or their property.

5. The PAA requires all persons who want to obtain a qualified supervisor, certified operator or private pesticide applicator license to pass an examination and license in the pesticide application category in which they intend to make RUP applications. The PAA also requires that a business must have a qualified supervisor in its employment in the pesticide category(s) it intends to make commercial applications in. The intent in the business and applicator licensure requirements is that the applicator be restricted to use pesticides intended for and perform commercial activities only in the licensure category(s) held. A new Part 15.04 is being created to clearly state that a pesticide applicator must hold the appropriate category of licensure to use or supervise the use of a restricted use pesticide. This amendment will clearly state this rather than having to reference multiple areas of the PAA.

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