



NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO

“Rules And Regulations Pertaining To The Administration And Enforcement Of The Pesticide Applicators’ Act”

8 CCR 1203-2, Parts 2, 8, and 10

Notice is hereby given pursuant to § 24-4-103 C.R.S. that the Department of Agriculture will hold a public rulemaking hearing:

DATE: February 22, 2024
TIME: 9:00 a.m.
LOCATION: This hearing will be held via [Zoom](#)
CALL INFORMATION: 1-719-359-4580
Meeting ID: 841 9093 3803
Passcode: 714324

In order to maintain a proper hearing record you are encouraged to pre-register by completing this [Google form](#). If you do not have access to Google you may send your name and telephone number to Hollis.Glenn@state.co.us
Pre-registration is not required to participate in the hearing.

The purpose of these Rule revisions is to further clarify new federal certification categories pursuant to 40 C.F.R. Part 171. Specifically, the revisions to the Rules parts 2.61(b), 8.01(m) and 10.01(i) to separate the 309 Soil / Non-soil fumigation category into subcategories that specifically address soil and non-soil fumigation applications and part 8.01(l)(1) to remove the word “agricultural” from the category 114, Aerial Pest Control category definition.

The statutory authority for these rules is §§ 35-10-118(2)(a) – (d), (3)(a) – (c), (4), (5) and (9), C.R.S.

Any interested party may file written comment with the Commissioner’s office prior to the hearing, or present at the aforementioned hearing written data, views or arguments. Emailed comments should be sent to the hearing officer at Hollis.Glenn@state.co.us. A copy of the proposed rule is available on the Department of Agriculture’s website at www.colorado.gov/ag or may be obtained by calling 720-560-6286. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.



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 2. The Licensing System.

Subpart A Commercial Applicators

- 2.01. 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.
- 2.02. 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.
- 2.03. 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.
- 2.04. In addition to the application form described above, 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.
- 2.05. Each person applying as a corporation or other entity shall submit a certificate of good standing from the Secretary of State.
- 2.06. 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.
- 2.07. Beginning with license year 1994, the annual license fee for commercial applicators shall be \$350.00.
- 2.08. 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.
- 2.09. Each applicant for a license shall provide evidence of liability insurance to the Commissioner.

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- 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 at the time any pesticide application is performed.
- 2.12. Adequate Supervision:
- (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.
 - (c) A qualified supervisor may act in a supervisory capacity for one or more commercial applicator businesses at any given time, but only for the licensure category(ies) the qualified supervisor holds.
 - (d) A qualified supervisor may supervise one or more technicians employed by multiple commercial applicator businesses, so long as the aggregate number of technicians supervised from among those commercial applicator businesses does not exceed 15 technicians at any one point.
- 2.13. A commercial applicator who conducts 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 C.F.R. Part 137 (2017) (as incorporated herein by reference). 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 solicit and enter into a written contract which incidentally requires one or more pesticide applications only in accordance with the provisions of this Part 2.15. 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. Entry into any such contract that does not have an express written statement that the contractor will subcontract with a licensed commercial applicator to perform the pesticide application(s) called for in the contract,

shall constitute a violation of § 35-10-117(1)(c), C.R.S. Failure to include such a statement in any solicitations, whether oral or written, to enter into such a contract shall constitute a separate violation of § 35-10-117(1)(c), C.R.S.

- 2.16. A commercial applicator not licensed in a category (“contractor”) may solicit and enter into a written contract with a customer to perform pesticide applications in said category only if the contractor subcontracts 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. Entry into any such contract that does not have an express written statement that the contractor will subcontract with a subcontractor licensed to perform the pesticide application(s) called for in the contract, shall constitute a violation of § 35-10-117(1)(c), C.R.S. Failure to include such a statement in any solicitation, whether oral or written, to enter into such a contract shall constitute a separate violation of § 35-10-117(1)(c), C.R.S.
- 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 Part 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 Part 2.23, 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 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 application form described above, 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 aurally 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 C.F.R. Part 137 (2017) (as incorporated herein by reference). 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.
 - (c) A qualified supervisor may act in a supervisory capacity for one or more commercial applicator businesses at any given time, but only for the licensure category(ies) the qualified supervisor holds.
 - (d) A qualified supervisor may supervise one or more technicians employed by multiple commercial applicator businesses, so long as the aggregate number of technicians supervised from among those commercial applicator businesses does not exceed 15 technicians at any one point.

- 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

- 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 must be 18 years of age and shall submit an application on a form provided by the Commissioner prior to the date of expiration of any current license which contains, at a minimum, the following: the applicant's identification number, if any, his or her name, the name, address, telephone number, date of birth, 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. Repealed
- 2.39. Except as provided in Part 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 in the licensure category(ies) the qualified supervisor(s) hold(s).
- 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.
- 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 Part 2.39. Any application for licensure pursuant to this Part 2.48 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 Part 2.48, 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 Part 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 authorized to use restricted pesticides for the purpose of producing an agricultural commodity as defined in Part 1.02(q).
- 2.50. Each applicant for a private applicator license or renewal of a license must be 18 years of age and shall submit an application on a form provided by the Commissioner, prior to the date of expiration of any current license, which contains, at a minimum, the following: the applicant's identification number, if any, his or her name, address, telephone number, date of birth, photocopy of their identification, and any other information required on the form.

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- 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 on-site supervision of any unlicensed private applicator 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 Part 2.54, supervision of any unlicensed person working "under his or her direction" shall mean work performed by an unlicensed individual acting under the instruction and control of a licensed private applicator where that unlicensed individual has met all training, qualifications, and use-specific condition requirements in accordance with 40 C.F.R. § 171.201(b) - (d) (2017) (as incorporated herein by reference) prior to the unlicensed private applicator using a restricted use pesticide under the on-site supervision of a licensed private applicator.
- 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.
- 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 Part 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 Part 2.59, 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 Part 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.
- 2.60. Private pesticide applicator licensure classification: Category 401, Private Pesticide Applicator Pest Control, is for the application of restricted use pesticides for the purpose of producing any

agricultural commodity on property owned or leased by the applicator or the applicator's employer or, when the pesticide is applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

- 2.61. Private applicators making aerial, structural, or soil / non-soil fumigant applications must hold one or more of the following categories that correspond to the application being made in addition to the category 401, Private Pesticide Applicator license:
- (a) Category 114: Aerial Pest Control: The application of pesticides by unmanned aerial vehicle (UAV), fixed or rotary wing aircraft.
 - (1) The Aerial Pest Control category may be obtained by successfully passing an approved Aerial Pest Control Certification examination offered by the Colorado Department of Agriculture or any state with an approved Environmental Protection Agency Certification Plan. Proof of a passing score obtained within the last 12 months with exam results 70% or better must be provided to the Department with the application.
 - (2) A reciprocal Aerial Pest Control license may be issued if the license, issued by a state with an approved Environmental Protection Agency Certification Plan with the equivalent category, is current and in good standing. A reciprocal license will expire on the date of the original issuing state's license.
 - (3) Applicators must obtain at least one (1) Pest Management Continuing Education Credit in Aerial Pest Control prior to the expiration of the license to renew the category. Failure to obtain at least one continuing education credit will result in the expiration of the licensure category and the applicator will be required to retest.
 - (b) Category 309A: Soil / ~~Non-Soil~~ Fumigation Pest Control: For the use of a fumigant to control pests in soil ~~or non-soil sites not otherwise addressed in category 303, Structural Fumigation Pest Control.~~
 - (1) The Soil / ~~Non-Soil~~ Fumigation Pest Control category may be obtained by successfully passing the Soil / ~~Non-Soil~~ Fumigation Pest Control Certification examination offered by the Colorado Department of Agriculture.
 - (2) A reciprocal Soil / ~~Non-Soil~~ Fumigation Pest Control license may be issued if the license, issued by a state with an approved Environmental Protection Agency Certification Plan with the equivalent category, is current and in good standing. A reciprocal license will expire on the date of the original issuing state's license.
 - (3) Applicators must obtain at least one (1) Pest Management Continuing Education Credit in Soil / ~~Non-Soil~~ Fumigation Pest Control prior to the expiration of the license to renew the category. Failure to obtain at least one continuing education credit will result in the expiration of the license category and the applicator will be required to retest.
 - (4) The Soil / ~~Non-Soil~~ Fumigation Pest Control category does not allow application of fumigants to control pests in structures as described in category 303, Structural Fumigation Pest Control. ~~To apply a fumigant in a structure, a person holding a category 401, Private Pesticide Applicator license, must also hold category 303, or to control pests in non-soil sites, such as burrowing rodent control, described in category 309B: Non-Soil Fumigation Pest Control.~~

- (5) To apply a fumigant in a structure or to apply a fumigant to control pests in non-soil sites, including burrowing rodent control, the private applicator must hold, in addition to a category 401, Private Pesticide applicator license, category 303, category 309B, or, if applicable, both.
- (c) Category 309B: Non-Soil Fumigation Pest Control: For the use of a fumigant to control pests in non-soil sites not otherwise addressed in category 303, Structural Fumigation Pest Control.
- (1) The Non-Soil Fumigation Pest Control category may be obtained by successfully passing the Non-Soil Fumigation Pest Control Certification examination offered by the Colorado Department of Agriculture.
- (2) A reciprocal Non-Soil Fumigation Pest Control license may be issued if the license, issued by a state with an approved Environmental Protection Agency Certification Plan with the equivalent category, is current and in good standing. A reciprocal license will expire on the date of the original issuing state's license.
- (3) Applicators must obtain at least one (1) Pest Management Continuing Education Credit in Non-Soil Fumigation Pest Control prior to the expiration of the license to renew the category. Failure to obtain at least one continuing education credit will result in the expiration of the license category and the applicator will be required to retest.
- (4) This Non-Soil Fumigation Pest Control category does not allow application of fumigants to control pests in structures as described in category 303, Structural Fumigation Pest Control, or application of fumigants to control pests in soil as described in category 309A: Soil Fumigation Pest Control.
- (5) To apply a fumigant in a structure or to apply a fumigant to control pests in soil the private applicator must hold, in addition to a category 401, Private Pesticide applicator license, category 303, category 309A, or, if applicable, both.

Subpart E Licensure Actions, Suspension, Denial, Revocation

- 2.62. 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 8. Agricultural Applicators.

- 8.01. The agricultural classification includes the following categories:

- (a) Category 101: 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) Category 102: 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.
- (c) Category 103: Agricultural Weed Control: the application of pesticides to agricultural lands, including pastures, croplands and non-crop agricultural lands, to control weeds.
- (d) Category 104: Seed Treatment: the application of pesticides to seeds on agricultural establishments as defined at 40 C.F.R. § 170.3 (as incorporated herein by reference) or seed treatment facilities.
- (e) Category 105: Livestock Pest Control: the application of pesticides to livestock.
- (f) Category 106: 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. This category does not apply to pesticide applications made to control vertebrate pests.
- (g) Category 107: 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 or 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 turf pest control category shall not apply to aerial applicators or ground applications made by federal, state, or local governments on property they own. This category does not apply to pesticide applications made to control vertebrate pests.
- (h) Category 108: Aquatic Pest Control: the application of pesticides to standing or running water when made to control weeds, amphibians, fish and other pests in water, except for pesticide applications which are included in the "Public Health" category, at Part 8.01(j).
 - (1) Category 113: 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) Category 109: 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) Category 110: Public Health Pest Control: The application of pesticides for the control of pests having medical or public health importance, except vertebrates. This category applies to non-government commercial applicators who use pesticides for the management and control of pests having public health importance.
 - (1) Category 110G: Government-Sponsored Public Health Pest Control: The application of restricted use pesticides in government-sponsored public health programs for the control of pests having medical or public health importance.
- (k) Category 111: 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.
- (l) Category 114: Aerial Pest Control: The application of pesticides by unmanned aerial vehicle (UAV), fixed or rotary wing aircraft.
 - (1) The Aerial Pest Control category must be held in addition to the ~~Agricultural~~ ~~Pest~~ ~~Management~~ ~~Category~~ for the aerial application being made.
 - (2) The Aerial Pest Control category may be obtained by successfully passing an approved Aerial Pest Control Certification examination offered by the Colorado Department of Agriculture or any state with an approved Environmental Protection Agency Certification Plan. Proof of a passing score obtained within the last 12 months with exam results 70% or better must be provided to the Department with the application.
 - 3) A reciprocal Aerial Pest Control license may be issued if the license, issued by a state with an approved Environmental Protection Agency Certification Plan with the equivalent category, is current and in good standing. A reciprocal license will expire on the date of the original issuing state's license.
 - 4) Applicators must obtain at least one (1) Pest Management Continuing Education Credit in Aerial Pest Control prior to the expiration of the license to renew the category. Failure to obtain at least one continuing education credit will result in the expiration of the licensure category and the applicator will be required to retest.
- (m) Category 309A: Soil ~~/Non-Soil~~ Fumigation Pest Control: For the use of a fumigant to control pests in soil ~~or non-soil sites not otherwise addressed in Category 303, Structural Fumigation Pest Control~~.
 - (1) The Soil ~~/Non-Soil~~ Fumigation Pest Control category must be held in addition to the Agricultural Pest Management Category for the fumigation application being made.
 - (2) The Soil ~~/Non-Soil~~ Fumigation Pest Control category may be obtained by successfully passing the Soil ~~/Non-Soil~~ Fumigation Pest Control Certification examination offered by the Colorado Department of Agriculture.
 - (3) A reciprocal Soil ~~/Non-Soil~~ Fumigation Pest Control license may be issued if the license, issued by a state with an approved Environmental Protection Agency

Certification Plan with the equivalent category, is current and in good standing. A reciprocal license will expire on the date of the original issuing state's license.

- (4) Applicators must obtain at least one (1) Pest Management Continuing Education Credit in Soil ~~/Non-Soil~~ Fumigation Pest Control prior to the expiration of the license to renew the category. Failure to obtain at least one continuing education credit will result in the expiration of the license category and the applicator will be required to retest.

(5) The Soil Fumigation Pest Control category does not allow application of fumigants to control pests in structures as described in category 303, Structural Fumigation Pest Control, or to control pests in non-soil sites, such as burrowing rodent control, described in category 309B: Non-Soil Fumigation Pest Control. To make such applications, a commercial applicator must hold category 303, category 309B, or, if applicable, both.

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 Parts 8.03(a)(3) through (6), and/or Parts 8.03(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, the applicator shall be responsible for giving the notices required by Parts 8.03(a) and (b) above to the person(s) who are occupying the site, as well as to the

customer. This Part 8.03(d) does not apply to applications to crops or to large-scale pest control programs.

- (e) Notices in this Part 8.03 may be provided electronically when the following conditions have been met.
 - (1) Commercial applicators must obtain a written request from each customer and occupant confirming their request to obtain any notice required by these Rules electronically.
 - (2) A commercial applicator must maintain a record of the written request(s) for electronic notices from each customer and occupant.
 - (3) A commercial applicator that does not have a record of the written request(s) for electronic notices on file at the time of an application must provide a notice as outlined in Parts 8.03(a) - (d).
- (f) Commercial, registered limited commercial, or registered public applicators must comply with all applicable signage requirements for aquatic applications in Part 13 below.

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

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- (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:
- (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 Parts 8.04(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;

- (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 10. Structural Applicators.

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

- (a) Category 301: 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) Category 302: Outdoor Vertebrate Pest Control: the application of pesticides intended for preventing, destroying, repelling or mitigating any reptile, bird, feral dogs and cats, moles, voles, bats, wild carnivores, rabbits, skunks, amphibian pests not in water and any other vertebrate pest, except rats and mice.
- (c) Category 303: Structural 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, including but not limited to railcars, storage containers, grain storage silos or other enclosures, including tarpaulin fumigations, for insect and/or rodent control. This category is required for the use of a fumigant in any licensure category authorized by Title 35, Article 10, when the application of the fumigant is made to or in a structure as defined in Part 1.02(m).
- (d) Category 304: 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) Category 305: 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). This category does not cover applications made to control pests in potato storage facilities covered by Category 308.
- (f) Category 306: 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) Category 307: 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.

- (h) Category 308: Post-Harvest Potato Pest Control: the application of pesticides for the treatment of pests in raw potatoes stored in facilities which are not used for animal or human habitation; the application of plant growth regulators to potatoes stored in facilities which are not used for animal or human habitation; and the application of pesticides to potato processing equipment or potato storage facilities (not including offices or other structures).
- (i) Category 309B: ~~Soil~~-Non-Soil Fumigation Pest Control: For the use of a fumigant to control pests in ~~soil~~ or non-soil sites, such as burrowing rodent control, not otherwise addressed in category 303, Structural Fumigation Pest Control.
- (1) The ~~Soil~~-Non-Soil Fumigation Pest Control category must be held in addition to the Structural Pest Management category for the fumigation application being made.
 - (2) The ~~Soil~~-Non-Soil Fumigation Pest Control category may be obtained by successfully passing the ~~Soil~~-Non-Soil Fumigation Pest Control Certification examination offered by the Colorado Department of Agriculture.
 - (3) A reciprocal ~~Soil~~-Non-Soil Fumigation Pest Control license may be issued if the license, issued by a state with an approved Environmental Protection Agency Certification Plan with the equivalent category, is current and in good standing. A reciprocal license will expire on the date of the original issuing state's license.
 - (4) Applicators must obtain at least one (1) Pest Management Continuing Education Credit in ~~Soil~~-Non-Soil Fumigation Pest Control prior to the expiration of the license to renew the category. Failure to obtain at least one continuing education credit will result in the expiration of the license category and the applicator will be required to retest.
 - (5) The Non-Soil Fumigation Pest Control category does not allow application of fumigants to control pests in structures as described in category 303, Structural Fumigation Pest Control, or application of fumigants to control pests in soil as described in category 309A: Soil Fumigation Pest Control. To make such applications, a commercial applicator must hold category 303, category 309A, or, if applicable, both.

10.02. An applicant for licensing as a qualified supervisor in the structural pest control categories of wood destroying organisms, residential/commercial 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.

- (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, post-harvest potato pest control, 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 or device 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 or device as are necessary or appropriate to avoid endangering human or animal health, or to avoid creating an unreasonable risk of damage to property.
- 10.06. Notices in Parts 10.04 and 10.05 may be provided electronically when the following conditions have been met.
- (a) Commercial applicators must obtain a written request from the customer or the occupant, as required, confirming their request to obtain any notice required by this Rule electronically.

- (b) A commercial applicator must maintain a record of the written request(s) for electronic notices from each customer or occupant.
 - (c) A commercial applicator that does not have a record of the written request(s) for electronic notices on file at the time of an application must provide a written notice as outlined in Parts 10.04 and 10.05.
- 10.07 When making pesticide applications within a multiunit dwelling site and the owner of the site or agent of the owner of the site is not present at the site, a commercial applicator must post a written notice at the primary entrance(s) to interior common area(s) that has been treated. The notice shall state the name of each pesticide applied, the date applied, and such precautionary statements from the label of the pesticide or device as are necessary or appropriate to avoid endangering human or animal health, or to avoid creating an unreasonable risk of damage to property. Electronic notices may not be used to meet this requirement.
- 10.08. Bed Bug Reporting Requirements in accordance with C.R.S. 38-12-1003 and 1004:
- (a) A commercial applicator, qualified supervisor, or certified operator inspecting a tenant's dwelling unit or any dwelling unit contiguous to a tenant's dwelling unit in single-family or multi-unit dwellings, in accordance with C.R.S. 38-12-1003, must provide a report of all bed bug activity that the commercial applicator, qualified supervisor, or certified operator identifies within the dwelling or any contiguous dwelling unit at the time of inspection, to the landlord within twenty-four hours of the inspection. Including:
 - (1) Units affected by bed bug activity; and
 - (2) Remediation recommendations.
 - (b) A commercial applicator, qualified supervisor, or certified operator inspecting a tenant's dwelling unit or any dwelling unit contiguous to a tenant's dwelling unit in single-family or multi-unit dwellings, in accordance with C.R.S. 38-12-1004, shall advise the tenant that any furniture, clothing, equipment, or personal property identified as having bed bug activity should not be removed from the dwelling unit until a pest control agent retained by the landlord determines that any bed bug treatment determined to be necessary has been completed.
 - (c) A commercial applicator, qualified supervisor, or certified operator providing any report in accordance with C.R.S. 38-12-1003 shall retain a copy of any such report required in Part 10.08(a) for three years.

Part 18. 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.

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

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 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 these 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.

18.02. 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.

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.

18.03. 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 at this time 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.

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

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 employ 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.
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.

18.05. 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.

18.06. 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. It 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-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.

18.07. 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 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.

18.08. 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; 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. 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.

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 that 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.

18.09. 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 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 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 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.

18.10. 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:

- 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.
- 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.

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 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.

18.11. 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:

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.

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.
- 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).

18.12. 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.

18.13. 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.

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 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.

18.14. June 11, 2013 – Effective July 30, 2013

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), and (9.5) C.R.S.

Purpose

The purpose of these proposed Rules is to clarify the Rule in regards to solicitations made prior to entering into a contract, create a new Rule to require that a record of active Endangered Species Bulletins be maintained and add a new Rule defining devices that produce a pesticide; which when used for hire require a commercial pesticide applicator license. All other proposed Rule amendments add clarification to the current interpretation, enforcement and intent of the existing Rules. Specifically:

1. Parts 2.15 and 2.16 are amended to clarify when solicitations to subcontract incidental pesticide applications can be made by a business that is not acting as and is not licensed as a commercial applicator.
2. Part 2.60 creates a new Rule defining the Private Applicator category and license purpose.
3. Part 6.03(k) creates a new Rule to require commercial applicators to maintain a record of any active Endangered Species Bulletin.
4. Part 7.05 is amended to clarify what labeling must be in the applicator’s possession when applications are being performed and exempt Endangered Species Bulletins from this requirement.
5. Parts 8, 9 and 10 are amended to add the numeric category reference to each pesticide licensure category.
6. Parts 8.01(f),(g) and (h) and Part 10.01 (b) are amended to clarify which pests may be treated under these categories.
7. Part 10.02 is amended to correctly state the licensure category.
8. Part 15.05 creates a new Rule requiring that devices that produce a pesticide, such as carbon monoxide, that when used for hire to control a pest requires a commercial applicator license.

Factual and Policy Issues

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

1. Part 2.15 allows a business that does not apply pesticides for hire to enter into a contract that incidentally requires the application of pesticides as long as there is a written provision in the contract expressly stating that the business will subcontract the application to a licensed applicator. Part 2.16 similarly allows a business that applies pesticides for hire and is licensed as a commercial applicator to subcontract applications that require a qualified supervisor licensed in a category not held by the business's own qualified supervisors, to subcontract the work if the contract expressly discloses that plan. Absent such statements, the Department would consider such contracts to constitute violations of the statutory provision, § 35-10-117(1)(c), C.R.S., which makes it a violation of the Act to present oneself to be qualified to perform or to solicit pesticide related services without a "valid commercial license." The Department realizes that in order to enter into such contracts, businesses must necessarily engage in some form of a solicitation – i.e., they must make an offer to their potential customers, whether oral or written. These amendments to Parts 2.15 and 2.16 clarify that a business proposing to enter into a contract with such a subcontracting provision must also disclose that they will subcontract pesticide applications that require licensure beyond what they hold at the time of the solicitation.
2. Part 2.60 is being created as a result of amendments being made to Parts 8, 9 and 10, to add the numeric categories for all pesticide licensure categories. When creating the language to classify a Private Applicator license as Category 401, the Department felt that stating the purpose of this licensure category would more clearly define what the license may be used for and match the category classification definitions in Parts 8, 9 and 10 of the Rules.
3. Part 6.03(i) creates a new Rule to require commercial applicators to maintain a record of any active Endangered Species Bulletin.

The Environmental Protection Agency in recent years has added Endangered Species (ES) specific language to certain pesticide labels that require pesticide applicators to obtain and abide by the Endangered Species Protection Bulletin. The requirements in an ES Bulletin are enforceable because compliance is mandated by the label. Therefore, applicators must follow all requirements on the ES Bulletin and failure to do so would be a label violation under both the Federal Insecticide, Rodenticide and Fungicide Act (FIFRA) and the PAA. In addition, as a condition of the EPA enforcement grant CDA is required to verify compliance with all elements of the label. EPA also has specified in our grant that the CDA must determine applicator compliance with the Endangered Species Act by verifying that applicators are referencing the ES Bulletins when required. In 2012 Colorado's first ES Bulletins for Rozol Prairie Dog Bait came into existence and ES Bulletin language is showing up on labels regularly now. The best way for CDA to verify that an applicator has referenced the ES Bulletin and followed all use restrictions for the pesticide, county and month the application was made is to require that the applicator maintain a copy of any active Bulletin that pertains to applications they have made in their records. A record of the Bulletin will only be required to be maintained when there is an active Bulletin for the product, county and month in which the application took place.

4. The intent of Part 7.05 is to require an applicator to have the original or a copy of the original pesticide label and any additional labeling directions in the possession of the applicator at the time of an application so all use directions are available at the job site. Currently Part 7.05 states, "...a copy of the pesticide label and any attached labeling for each product in use shall be in the possession of the commercial...applicator..." The word "attached" no longer represents how labels and labeling may be accessed with new technologies. Labels and labeling are now more likely to be downloaded from the registrant's or EPA's website and maintained electronically. Some products do not have labeling physically "attached" to a product. Therefore, the Department feels that changing the word "attached" to the word "associated" would clearly state the requirement of Part 7.05, which is to have copies of the pesticide label and all of its

associated labeling. The word “copies” does not designate or restrict the form or manner in which the label copy must be in the applicator’s possession.

The definition of “labeling” found in the Pesticide Act in relation to the Endangered Species (ES) Bulletins excludes “current official publications” of the EPA. ES Bulletins are publications of EPA that are not created and distributed with the pesticide label. CDA is proposing to add a clarifying statement that, for the purposes of Part 7.05, ES Bulletins are not required to be in the possession of the applicator at the time of the application, since an ES Bulletin is not “labeling”. It should be noted, however, that any requirements in an ES Bulletin are enforceable because compliance is mandated the label. Therefore, applicators must still follow all requirements on the ES Bulletin just as any other requirement on the label and failure to do so would be a violation of the PAA. CDA felt clarification is needed in Part 7.05 so applicators understand that although they must have a copy of the label in their possession at the time of application, they are not required to have the ES Bulletin in their possession. CDA is proposing to amend Part 7.05 to clearly state the ES Bulletin is not required to be in the applicator’s possession at the time of an application.

5. Parts 8, 9 and 10 are amended to add the numeric category reference to each pesticide licensure category. CDA routinely refers to pesticide applicator licensure categories with a numeric reference in publications, enforcement documents, license documents, examination documents, etc.; i.e.: Category 101, Agricultural Insect Control. CDA is proposing that all licensure category descriptions in Parts 8, 9 and 10 be amended to reflect the appropriate numeric category reference number to ensure Department publications, administrative documents and enforcement documents legally coincide.
6. Recently the question was brought to the Department’s attention, asking if rodents can be treated in rangeland areas with the Rangeland Pest Control Category vs. the Outdoor Vertebrate Control Category. The licensure category description in the Rangeland category is a very broad, stating that this category is for the “application of pesticides to rangeland”. Arguably this language would allow the applications of any pesticide, including those applied to rodents in Rangeland areas. However, the Outdoor Vertebrate licensure category clearly states that the Outdoor Vertebrate Pest Control category must be held to apply pesticides to control outdoor vertebrate pests, regardless of the site they inhabit; adding to the confusion.

The original intent of the Rangeland category was for the application of pesticides to rangeland areas for pests other than rodents, i.e.: weeds, insects, etc. The Outdoor vertebrate category was intended to apply pesticides for the control of vertebrate pests, regardless of the site they may be found (i.e.: water, rangeland, structures, pasture, right-of-way, etc.). During our review, we found this broad statement not only in the Rangeland category but also in the Forestry and Aquatic categories, making the licensure requirements confusing unless the applicator reads the Outdoor Vertebrate licensure category with these other definitions. Even then, it is not clear if the Outdoor Vertebrate Pest Control license would be needed.

The other licensure categories do have specific descriptions as to what that licensure category does and does not allow. For example:

- 8.01 (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.
- 8.01 (j) Public Health Pest Control: the application of pesticides for control of disease vectors, except vertebrates.
- 9.01 (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.

The CDA is proposing that the Rangeland Pest Control and Forest Pest Control category definitions be amended to clearly state that these categories allow the application of pesticides to be applied to control pests “except vertebrates”, as similarly stated in the Public Health Pest Control Category.

During our discussion with the Pesticide Advisory Committee it was pointed out that amphibian and fish pest control is currently under the Outdoor Vertebrate Control category. It was recommended that the Department allow these vertebrate pests to be treated under the Aquatic Pest Control license, since the pesticide applications are being made directly to water. The Department agreed with this reasoning and therefore is proposing to clarify the licensure requirements for controlling vertebrate pests in and out of water in the Part 8.01(h), Aquatic Pest Control and Part 10.01(b), Outdoor Vertebrate Pest Control.

7. CDA recently identified a discrepancy in Part 10.02, which outlines the structural pest control experience requirements for licensure as a qualified supervisor. The current language incorrectly references the Residential/Commercial Pest Control licensure category, found in Rule 10.01 (d), as “household pest control”. The Department believes this was an oversight in the terminology when the Rule was originally enacted, since nowhere in the PAA is “household pest control” referenced as a license category. CDA proposes to amend Part 10.02 to remove the reference to “household pest control” and correctly state the licensure category referenced in Part 10.01(d), Residential/Commercial Pest Control.
8. In FY 2012 it was brought to the attention of the Department that a licensed commercial applicator wanted to use a device, called the Pressurized Exhaust Rodent Control (PERC), to convert gasoline to carbon dioxide (and other gases) and then pump carbon monoxide into a building void (in a strip mall) to treat bird mites and other pests associated with a bird infestation. The PERC is a device intended to only control rodents; it generates carbon monoxide with an attached engine, pressurizes it into a large tank, and the gas is then pumped into rodent burrows. The directions prohibit use on structures and recommend the applicator maintain a 150 ft. buffer from structures.

Under 35-10-118 (9.5) - Powers and duties of the Commissioner, adopted as a result of the 2006 Sunset review, it states:

The Commissioner shall designate by rule which devices, when operated for hire, require the operator to be licensed as a commercial applicator. Licensure shall be required only for the use of those devices that, as determined by the Commissioner, may constitute a significant risk to public health or safety.

Since the CDA does not currently have any devices in Rule designated to require licensure, the CDA has no regulatory authority over individuals using these devices. Therefore, the CDA cannot require licensure when using these devices for hire or take any enforcement action on a commercial applicator when the device is used incorrectly, even when it would cause a risk to the public’s health or safety.

The CDA is proposing the creation of a new Rule 15.05 that requires licensure for the use of any device that generates/produces a pesticide as defined in the Pesticide Applicators’ Act § 35-10-103(10), C.R.S., to help ensure public safety, by requiring applicators have the proper training and licensing to use any device for hire that produces a pesticide. In addition, Rule 15.05 requires the applicator to use the device in accordance with the manufacturer’s directions.

18.15. February 12, 2014 – Effective March 30, 2014

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), and (9.5), C.R.S.

Purpose

The purpose of these proposed Rules is to clarify the procedures that must be used when operating a device that produces a pesticide, specifically carbon monoxide; which when used for hire requires a Commercial Applicator license. Specifically:

- 1) Part 1.02 is amended to add the definition of a device that is regulated under this article.
- 2) Parts 6.01 and 6.03 are amended to reference record keeping requirements for the use of a device that generates a pesticide in Part 15.07 of these Rules.
- 3) Parts 10.04 and 10.05 are amended to include devices in the post application notification requirements.
- 4) Part 15.05 is amended and creates new Rules clarifying the pest and sites of application allowed with a device that generates a pesticide.
- 5) Parts 15.06 (a) and (b) create new Rules that outline the procedures and requirements a Commercial Applicator must follow when making applications within specified distances from occupied structures.
- 6) Part 15.07 creates a new Rule specifying the records Commercial Applicators that use devices that generate a pesticide must maintain.

Factual and Policy Issues

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

- 1) In FY 2012 it was brought to the attention of the Department that a licensed Commercial Applicator wanted to use a device, called the Pressurized Exhaust Rodent Control (PERC), to convert gasoline to carbon monoxide (and other gases) and then pump carbon monoxide into a building void (in a strip mall) to treat bird mites and other pests associated with a bird infestation. The PERC is a device intended to only control rodents; it generates carbon monoxide with an attached engine, pressurizes it into a large tank, and the gas is then pumped into rodent burrows. The directions prohibit use on structures and recommend the applicator maintain a 150 ft. buffer from structures.

Section 35-10-118 (9.5), C.R.S., powers and duties of the commissioner, adopted as a result of the 2006 Sunset review, states:

The commissioner shall designate by rule which devices, when operated for hire, require the operator to be licensed as a commercial applicator. Licensure shall be required only for the use of those devices that, as determined by the commissioner, may constitute a significant risk to public health or safety.

The CDA passed a new Rule on July 30, 2013, to require licensure for any person that uses any device that generates/produces a pesticide as defined in the Pesticide Applicators’ Act § 35-10-103(10), C.R.S., to help ensure public safety by requiring applicators to have the proper training and licensing to use any device for hire that produces a pesticide. This rule also requires commercial applicators to follow label directions for such devices.

- 2) After the Rule hearing it was brought to the attention of the Department that current device directions may restrict applications around and up to a structure, impacting a Commercial Applicator's business negatively.
- 3) After the Rule hearing it was brought to the attention of the Department that these devices could be built by an individual and no "directions" would be associated with these devices used for hire, therefore there would be no way to ensure the device would be used in a manner that would not create an unsafe situation for the public.
- 4) In the normal registration process of a pesticide the Environmental Protection Agency (EPA) assesses the risk of using a pesticide and directs registrants on what labeling use directions or restrictions are needed. EPA only requires manufacturers of devices to register their device with EPA and they register an EPA establishment number. With respect to devices, EPA does not review their efficacy or risk created by their use. Neither does it review or require directions for use to be submitted to or approved by them. Therefore, to ensure public safety, this requirement fell on the Department and necessitated the development of these Rules.
- 5) The Department obtained input from USDA and the Colorado Department of Public Health and Environment (CDPHE) when creating this Rule. CDPHE generated modeling data showing the potential amount of carbon monoxide that could leak into a structure. This data showed that in certain circumstances carbon monoxide levels could rise to deadly levels within minutes and create a situation where adverse impacts to health and safety were possible, including death.
- 6) Part 1.02 (m) was created to define devices for which licensure is required and link their definition to "pesticides". This allowed all PAA licensure and business requirements for the use of a pesticide for hire to be extended to devices being used for hire where applicable.
- 7) Parts 6.01 and 6.03 were amended to clarify that recordkeeping requirements pertaining to the use of a device that requires licensure are outlined in Part 15.07 of the Rule.
- 8) Parts 10.04 and 10.05 were amended to address customer notification requirements for the use of devices that require licensure. The Rule now requires licensees using a device requiring licensure to meet similar notification requirements to the customer as for other pesticide applications, including providing the date and time of application and any precautionary statements from the device directions.
- 9) Part 15.05 was amended to clarify that it is a violation to use a device that generates a pesticide in a manner inconsistent with these Rules. It requires that these devices may only be used for burrowing rodent control and that the Commissioner may approve other uses if the Commissioner can determine that such use will not pose a risk to the public health or safety.
- 10) Part 15.06 was created to allow device applications up to the foundation of occupied structures. Part 15.06 (a) specifies the distances within which additional precautions must be taken. The additional precautions outlined in 15.06(b) are intended to ensure that occupants of structures will not be exposed to carbon monoxide in situations where carbon monoxide accidentally leaks into a structure. The precautions include evacuating the structure and require the applicator to "clear" the structure with a carbon monoxide monitoring device prior to allowing any occupants back into the structure. Part 15.06(b) also requires information be provided to the customer on carbon monoxide poisoning symptoms and directions to evacuate and seek medical attention, should they have symptoms following the application.
- 11) Part 15.07 was created to require recordkeeping of device applications. These recordkeeping requirements will allow the Department to investigate the proper use of a device in the case of a complaint and to ensure applicators are complying with the application precautions and requirements outlined in Part 15.06.

18.16. Adopted November 10, 2015 – Effective December 30, 2015.

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”), §§ 35-10-109(2) and 35-10-118(2), C.R.S.

Purpose

The purpose of these proposed Rules is to adopt new Rules to: (1) meet the requirements of training specified in SB 15-119; (2) re-define commercial business locations; (3) create a new Post Harvest Potato Pest Control licensure category; (4) allow for electronic notification of pesticide applications and; (5) make necessary conforming language changes. Specifically:

- (1) Rule 1.02 is amended to add the definition of a “ready to use pesticide”.
- (2) Rule 5 is amended to fix a typographical error from previous Rules.
- (3) Rule 5.02 is amended to clarify that the technician training required in Rule 5.02 does not apply to non-registered limited commercial applicator and non-registered public applicators.
- (4) Rule 10.01 is amended to create a new Post Harvest Potato Pest Control category and provides for the award of the category for existing licensees holding the Stored Commodities Treatment category and for licensure and renewal requirements after January 1, 2016.
- (5) Parts 8, 9 and 10 are amended to allow for electronic notification of pesticide applications.
- (6) Part 11 is amended to correctly state new terminology regarding “safety data sheets”.
- (7) Update address of the Department.
- (8) Create a new Part 16 to address training requirements as a result of SB 15-119 for non-registered limited commercial applicators and non-registered public applicators. This Part outlines what training is required for the use of certain general use pesticides, when training is required, how training can be met and recordkeeping requirements.
- (9) These amendments incorporate changes as a result of the Department’s Regulatory Efficiency Review Process.

Factual and Policy Issues

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

- (1) The current Stored Commodities Treatment category focuses on the fumigation and treatment of raw grains in storage facilities; such as silos and grain bins. It was brought to the Department’s attention that post-harvest potato treatments, which have been conducted under the current Stored Commodities category since the 90’s, are significantly different in the equipment required and knowledge needed to conduct these specialized pesticide applications. The Department verified this and in the course of considering this licensure category found several other states that have significant potato agricultural industries have a specific post-harvest potato treatment licensure category. Since the Department’s current Stored Commodities Treatment category does not adequately address post-harvest potato treatments and due to the complexity and knowledge needed to perform these applications, the Department is proposing this new licensure category.

- The study guide and exam was done in cooperation with post-harvest potato treatment applicators.
- (2) The proposed Rule 10.01 (h) will provide for licensees with the current Stored Commodities treatment category to be awarded the Post-Harvest Potato Treatment category, because under the Stored Commodities category they were already allowed to perform these applications prior to the creation of this new licensure category, and outlines the time frames when examination, continuing education and renewal are required.
 - (3) The Department was approached by industry to consider a Rule change to allow required notices of pesticide applications outlined in Rules 8.03, 9.04 and 10.06 to be provided electronically to their customers. As technology has evolved more commercial applicator customers request that these notices of pesticide applications be sent via electronic means, rather than posting a written paper notification on a door that they may never enter. The proposed Rules in 8.03, 9.04 and 10.06 provide a means for commercial applicators to confirm and maintain a record that their customer has requested an electronic notice and clarifies the circumstances when an electronic notice can and cannot be used in place of written notification.
 - (4) Rule 10.07 is a new Rule addressing notification in multi-unit structures when common areas have been treated, which had previously not clearly required posting. The Department added this additional clarification due to on-going complaints that structural applications made to common areas are not adequately communicated to persons living in the structure who must pass through these areas to gain entry to their unit.
 - (5) As a result of SB 15-119, a new Part 16 has been created to address the new training requirements for any owner or designee of a non-registered limited commercial applicator and any employee of a non-registered public applicator making applications with a general use pesticide. During the Department's discussions with the Department of Regulatory Agencies, this recommendation was made to address concerns expressed during the Pesticide Applicator Act Sunset review by those that felt that a higher level of training should be required for non-registered limited commercial and non-registered public applicators that make similar pesticide applications as those made by commercial applicators and who are held to a higher standard of training and knowledge. Additional training for individuals making pesticide applications in areas that are considered "sensitive sites", such as schools and health care facilities, were a concern as well. The Department took into consideration comments received from industry and during the legislative session that antimicrobial pesticides, i.e.: cleaning products, or those that were packaged in a ready to use containers that do not require mixing or loading of the pesticide into separate containers and limit the user to smaller quantities that limit potential exposures to the end user or public were beyond the scope of pesticide use that should require this additional training.
 - (6) The Department is proposing the following new Rules to address SB 15-119. Rule 1.02(i) provides the definition of a "ready to use" pesticide. Rule 16.01 outlines the scope of whom this Rule applies to. Rule 16.02 clarifies what general use pesticides require training to use. Rule 16.03 clarifies what general use pesticides do and do not require training. Rule 16.04 outlines what core pesticide safety training subjects must be covered and the manner in which the training may be met. Rule 16.05 clarifies how often the training must be conducted and Rule 16.06 outlines how long records of the training must be maintained.
 - (7) The Rules are being amended to address typographical errors, make conforming language changes and update verbiage to current regulatory references.

18.17. Adopted February 10, 2016-Effective March 30, 2016

Statutory Authority

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 (“PAA”) Sections 35-10-118(2), 35-10-117(1)(i) and 35-10-117(2)(a), C.R.S.

Purpose

The purpose of these Rules is to establish the criteria for determining which pesticides may be used in the cultivation of cannabis to prevent unsafe use. They also change the recordkeeping period for Private Applicators. Specifically these Rules:

- (1) Create a new Part 17 which specifically addresses the use of pesticides in the production of cannabis;
- (2) Create a new Rule 17.01 which establishes definitions specific to “cannabis”, “human consumption”, and “tolerances”;
- (3) Create a new Rule 17.02 which provides that the Department will publish the list of pesticides that meet the criteria for use on cannabis;
- (4) Create a new Rule 17.03 which provides that all pesticides used in the cultivation of cannabis must be registered with the Department;
- (5) Create a new Rule 17.04 which establishes the criteria for determining which pesticides may be legally used in the cultivation of cannabis in accordance with Sections 35-10-117(1)(i) and (2)(a), C.R.S., which prohibits the use of pesticides in an unsafe manner;
- (6) Create a new Rule 17.05 which allows the Commissioner to prohibit the use of any pesticide product on cannabis if he determines that such use may pose a significant threat to public health and safety or the environment, even though it otherwise satisfies the criteria for use on cannabis in Rule 17.04; and
- (7) Update Rule 6.05 to match the two year private applicator recordkeeping requirement in the PAA.

Factual Policy and Issues

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

- (1) The use of pesticides in Colorado is regulated under the Pesticide Applicators’ Act, Sections 35-10-101 – 128, C.R.S. Pesticide regulation is based on the labeling of the pesticide product, the language of which is enforceable under the PAA. Because cannabis is not a specifically listed crop on any label currently registered with the Department, products with broad label statements that do not prohibit use on cannabis are currently the only ones that may be used legally on cannabis in Colorado.
- (2) These Rules and criteria are being established to allow the use of certain pesticides in the cultivation of cannabis based on the available science and information the Department can confirm at this time. Without these Rules and the criteria they set out, the use of a pesticide that has not had a tolerance established for use on edibles (food), or the use of a pesticide that is not intended to be consumed through inhalation by smoking, could be allowed on cannabis by a broadly worded label, even though such use would be “unsafe” under Sections 35-10-117(1)(i) and (2)(a), C.R.S.
- (3) Both the PAA and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) require that all pesticides be applied in strict accordance with the label directions for the

particular product. As part of the directions for use, pesticide labels specify the particular crops and/or sites to which they can be applied. Depending on the particular pesticide, the crops/sites listed on the label can be expressed very specifically (e.g., “wheat”), or more generally (e.g., “grain crops”). While a pesticide with a label that specifies “wheat” can only be applied to wheat, a pesticide that lists “grain crops” on the label can be applied to wheat, barley, oats, rye, etc. In determining which pesticides, if any, may be used legally on cannabis, CDA initially consulted with the U.S. Environmental Protection Agency (EPA) as to whether there might be any general crop groups, such as herbs, spices or vegetable gardens, into which cannabis might fit (note: there are no registered pesticides that specifically list cannabis as a crop on the label). The current position of EPA is that cannabis is not an herb, a spice or a vegetable. However, EPA agrees that, depending on actual label language, it is not a violation of a pesticide label under the PAA or FIFRA to use the product on cannabis if it has certain, very generally worded descriptions of crops/sites on the label, and the product’s active ingredient is exempted from the requirement of a tolerance.

- (4) Tolerances are established by EPA in accordance with the Federal Food and Drug Cosmetic Act, U.S.C. Title 21, Section 408. A tolerance is the maximum amount of the active ingredient of a pesticide product that is allowed to remain in or on a food crop as residue after application of the product. Pesticide products that have significant toxicity, which could pose a hazard to public health if threshold amounts are exceeded when consumed and could result in acute or chronic poisoning, are required to have tolerances established by EPA. Tolerances for a given active ingredient typically vary depending on the specific food crop to which it is applied. EPA sets tolerances by determining that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residues at the tolerance levels established, including all anticipated dietary exposures. Exemptions from tolerances are established under 40 CFR, Part 180, Subpart D: 180.900: “... An exemption from a tolerance shall be granted when it appears that the total quantity of the pesticide chemical in or on all raw agricultural commodities for which it is useful under conditions of use currently prevailing or proposed will involve no hazard to the public health.”
- (5) Section 3 of FIFRA provides EPA the authority and 40 C.F.R., Parts 150-167, outline the requirements to register a pesticide with EPA. Pesticide labeling is derived through EPA’s risk assessments required to be conducted as a condition of registration that determine the manner and rates of application in which a pesticide may be used on a site or a crop without resulting in adverse impacts to public health or the environment. To date no risk assessments have been conducted specifically for pesticide use on marijuana.
- (6) Risk assessments have been conducted to determine what pesticide active ingredients are tolerance exempt. EPA has determined that for those active ingredients determined to be tolerance exempt, “...the total quantity of the pesticide chemical in or on all raw agricultural commodities...will involve no hazard to the public health.”
- (7) EPA requires that a pyrolysis study be conducted during the risk assessment process for products intended to be smoked such as tobacco, unless EPA has exempted the pesticide from pyrolysis studies due to the nature of the pesticide.
- (8) The Colorado Food and Drug Act (CFDA) provides the Colorado Department of Public Health and Environment (CDPHE) with authority over cannabis contaminated with pesticide residues (“adulterated” under the CFDA) that is very similar to the authority used by the Food and Drug Administration to deal with pesticide contamination of all other agricultural crops. The CFDA gives CDPHE specific authority over “unsafe” “pesticide chemicals” in “raw agricultural commodities,” the definition of which is broad enough to include cannabis which is grown, harvested and then processed and sold for

consumption through various means, including ingestion as a component of food (in edibles).

Under the CFDA, “food” is defined to mean “articles used for food or drink for man or other animals...and articles used for components of any such article.” C.R.S. § 25-5-402(11). “Food” includes any “raw agricultural commodity,” which is “any food in its raw or natural state...” C.R.S. § 25-5-402(21). Cannabis, which is grown and used as a component in many forms of edible food products, thus qualifies as a raw agricultural commodity under the CFDA. Although not all cannabis is used in edibles (“food” under the CFDA) cannabis can be used for any purpose after harvest, including food use, thus warranting treatment of all cannabis crops as a food for pesticide regulation purposes. Under Section 25-5-410(1)(b)(II) of the CFDA, “a raw agricultural commodity” is “deemed to be adulterated” if “it bears or contains a pesticide chemical which is unsafe within the meaning of Section 25-4-413(1)” unless the concentration of the residue is less than the tolerance set for the commodity or is tolerance exempt as provided for in Section 25-5-413(1). Section 25-5-413(1) in turn states that, “[a]ny pesticide chemical in or on a raw agricultural commodity...shall be deemed unsafe for the purpose of application of Section 25-5-401(1)(b)” unless there is a tolerance established for that crop and the residue level is within that tolerance. Thus unless a pesticide found on a cannabis crop has a tolerance for use on cannabis or is tolerance exempt, its presence in any amount on cannabis constitutes adulteration that renders the cannabis unsafe for human consumption under the CFDA as a matter of law. These Rules reflect and follow the General Assembly’s determination in the CFDA that consumption of food containing pesticides without a tolerance or exemption is unsafe. The Rules thus prohibit the application of such pesticides to cannabis as similarly unsafe as under the PAA in order to prevent adulteration from pesticides as addressed in the CFDA from occurring.

This approach for regulating pesticide use in order to prevent contamination of cannabis is the same as EPA and CDA apply to any other multipurpose-purpose agricultural commodity that can be used in food after harvest. It reflects the fact that neither EPA nor CDA have any way of knowing or controlling what a grower of such crop chooses to do with the crop once harvested. For example, under EPA’s registration system, any pesticide labeled for use on cotton, which once harvested can be used for both fiber and food (in the form of cotton oil), must have a tolerance established and be labeled for food use even though the particular cotton crop to which it is applied in the field may not ultimately be used as food.

- (9) Depending on how it is processed and sold after harvest, cannabis may be consumed through inhalation (smoking), ingestion (eating) and through dermal exposures (creams and lotions applied topically). Due to the lack of specific risk assessments or tolerances for use of any pesticides specifically on cannabis CDA, in accordance with the CFDA, has determined that it is unsafe to apply any pesticide to cannabis that requires a tolerance for applications to raw commodities or that is not approved for use on tobacco.

The heightened safety concern created by the multiple ways in which cannabis is consumed was highlighted recently by the marijuana industry’s widespread use of a product called Eagle 20 which contains the active ingredient myclobutanil. In a May 2015 lawsuit against the City of Denver and CDA challenging the City’s hold orders preventing the sale of marijuana on which myclobutanil was found, a marijuana grower argued that myclobutanil was safe to ingest and smoke. Because no risk assessments had been conducted specifically for the use of myclobutanil on marijuana and no tolerances for such use were established, the City and CDA argued that it was unsafe to use myclobutanil on marijuana. Although the judge ruled in the City’s and CDA’s favor and sustained the hold orders, based on the scientific information available at that time and presented to the court, the judge stated in his ruling that, “The evidence at the hearing strongly suggests that myclobutanil is likely safe for use on marijuana and that the levels

of myclobutanil found on the Plaintiff's marijuana would not constitute a health threat to those who ingest it, either through eating or smoking".

Only a month later, in June 2015, Frank Conrad, the Lab Director of Colorado Green Lab, confirmed the City's and CDA's concerns when he analyzed the known chemical and physical properties of myclobutanil and reported in his paper, "Eagle 20 and Myclobutanil in the Context of Cannabis Cultivation and Consumption," that when heated above 205 degrees Celsius (cigarette lighters burn at 450 degrees Celsius) myclobutanil forms hydrogen cyanide (HCN). Conrad's paper points out that HCN is known to cause serious neurological, respiratory, cardiovascular, and thyroid problems and that cannabis retaining even marginal amounts of myclobutanil (ex. 0.03 ppm) could potentially expose consumers to non-lethal, but clinically relevant levels of HCN. This illustrates the potential danger of using a pesticide on cannabis that does not meet the criteria established in these Rules, including tolerance exemption of all active ingredients and EPA approval of use on tobacco (which is consumed through inhalation).

- (10) CDA has identified certain pesticide products whose use on cannabis would not constitute a violation of the label due to the very general use statements on the label. In addition, because the active ingredient(s) of these pesticide products are exempt from a tolerance requirement they in most cases provide for use on crops that may be consumed. However, broad labeling and a tolerance exemption for food use does not necessarily mean the active ingredient was tested or approved for use on products to be smoked, such as tobacco. Since cannabis may also be consumed by smoking, any pesticide product allowed for use on cannabis must also have active ingredients that are approved for use on tobacco to ensure EPA has considered use on commodities intended to be smoked in their risk assessment.
- (11) CDA is proposing that the only pesticides allowed for use on cannabis be those registered with CDA in accordance with Title 35, Article 9, C.R.S. This will prevent the application of "home-made" pesticide concoctions containing active ingredients that may be unknown and could pose a serious health risk to the applicator and end user if consumed. This will also ensure that any pesticide product applied to cannabis has had a risk assessment conducted to determine allowed uses.
- (12) These Rules set forth the specific criteria, which if met, will prevent the use of pesticides for the cultivation of cannabis in an unsafe manner that would violate Sections 35-10-117(1)(i) and (2)(a) C.R.S.. Section 3 registered pesticide products may be used on cannabis if:
 - (a) The active ingredients have been determined to be tolerance exempt from the requirements of a tolerance, as established under 40 C.F.R. Part 180, Subparts D and E. EPA has established in the risk assessment process that these products are of lowest toxicity and therefore do not require tolerances to be established for use on raw commodities.
 - (b) The label has broad language that allows the use of the pesticide on the site of application. The term "site" includes all sites of application, including interior, exterior sites, structures in which application may be made, as well as the actual plant or crop.
 - (c) The pesticide product label expressly allows use on crops intended for human consumption. This is intended to prevent the use of pesticides on cannabis that although broadly labeled, are not tested or intended for use on food crops.
 - (d) The pesticide's active ingredients must be allowed by EPA for use on tobacco. Pesticide products may contain active ingredients that have had risk

assessments conducted for consumption in food, but those active ingredients may not have been tested or intended to be burned and inhaled. Requiring that all active ingredients in pesticides used on cannabis have EPA-allowed uses on tobacco, will ensure that EPA has considered this in their risk assessment process.

- (e) Some pesticide products may meet all of the required criteria except being expressly labeled for food use due to marketing toward other markets. Nevertheless, if CDA can verify with the manufacturer that the product's master label allows food uses and that all of the active and inert ingredients are allowed for use on food crops and tobacco, CDA through this Rule will have the authority to allow the product's use on cannabis.
- (13) Under the authority of Section 24(c) of FIFRA, states may register an additional use of a federally registered pesticide product, or a new end use product, to meet special local needs. EPA reviews these registrations, and may disapprove the state registration if, among other things, the use is not covered by necessary tolerances, or the use has been previously denied, disapproved, suspended or canceled by the Administrator, or voluntarily canceled subsequent to a notice concerning health or environmental concerns.

These Rules will allow the use of pesticide products on cannabis that have gone through the 24(c) registration process. The 24(c) process will require additional data submission specifically to address use on cannabis, including residue studies and considerations for extracts as well as submission of specific use instructions for use on cannabis. EPA will review this information and deny the registration if it does not support the use.

- (14) EPA has determined that certain "minimum risk pesticides," commonly referred to as "25(b) pesticides," pose little to no risk to human health or the environment. EPA has exempted them from the requirement that they be registered under FIFRA. These products must still be registered with CDA and meet minimum FIFRA standards for labeling requirements and claims.

There may be some 25(b) products that the manufacturer did not intend to allow end users to consume. The Rule will only allow the use of 25(b) minimum risk pesticide products on cannabis if the pesticide labeling allows use on crops or plants intended for human consumption.

- (15) The Rules will allow the Commissioner to prohibit the use of any pesticide that he determines could pose a threat to public health and safety or the environment, even if it otherwise meets the Rules' criteria. Pesticide use on cannabis is a newly regulated area of agriculture and new information is coming to light daily. This will give CDA the means to stop the use of any previously approved pesticide when new information or science establishes that such use would be unsafe.
- (16) Applying the criteria in the Rules to the more than 12,000 pesticides currently registered with the State of Colorado, CDA has determined that there are less than two hundred pesticides that can be legally used in the cultivation of cannabis. In order to inform cannabis growers which pesticides are available to them, CDA has created a list of pesticides that can be legally used. This list will be published on CDA's website and updated as needed.
- (17) As a result of SB15-119 the Private Applicator recordkeeping requirement was changed from three years to two years, to match the federal recordkeeping requirement. This change to Rule 6.05 will make the Rule consistent with the PAA.

18.18. Adopted September 20, 2017- Effective November 30, 2017

Statutory Authority

The 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) and (b), C.R.S.

Purpose

The purpose of these Rules is to add a new Post Harvest Potato Pest Control category; amend the criteria for determining which pesticides may be used in the cultivation of Cannabis to allow for the use of unregistered pesticides during research and demonstration activities only; to update commercial applicator storage signage requirements; and to make conforming changes to clarify existing Rules. Specifically, these Rules:

1. Correct typographical errors and references.
2. Amend Rules 5.25, 5.26, 5.27, 5.28 and 10.03 to add the new Post Harvest Potato Pest Control category.
3. Amend 8.01(g) to make the “turf” reference consistent throughout this Part 8.
4. Amend Rule 11.05 to provide a more flexible manner in which commercial applicators must post signs notifying employees, first responders, and other parties of the presence of pesticides in pesticide storage areas.
5. Amend Rule 17.03 to allow the use of unregistered pesticides in the cultivation of Cannabis for research and demonstration purposes only.

Factual and Policy Issues

1. Clarify which part of Rule 5.01 outlines the required training and experience to meet the qualifications of a New Hire Experienced Technician.
2. On December 30, 2015, a new licensure category, the Post-Harvest Potato Pest Control category (i.e., Category 308), was created. Prior to the creation of this licensure category, post-harvest potato pest control pesticide applications were performed under the Stored Commodities Treatment category (i.e., Category 305). Rules 5.25, 5.26, 5.27, 5.28 and 10.03 outline the technician training requirements and experience required to obtain a Qualified Supervisor’s license in the Stored Commodities Treatment category. To address the technician training and licensure experience requirements for the Post-Harvest Potato Pest Control category, the Department proposes to update Rules 5.25, 5.26, 5.27, 5.28 and 10.03 to add the Post-Harvest Potato Pest Control category so that the training and experience requirements are the same for this category as for its parent category.
3. The Turf Pest Control category and the Ornamental Pest Control category fall under the broad definition of “ornamental” applications. The Rangeland Pest Control category defines sites of applications for this licensure category and requirements that applicators who make applications in a forested area that is within fifty feet of a residence or commercial structure also comply with the posting and notification requirements in the Turf Pest Control category. Rule 8.01(g) currently references the Turf Pest Control requirement and uses the general “ornamental” term. To clarify the rule requirement, the Department proposes to reference the Turf Pest Control category throughout.

4. Rule 11.05 sets forth that warning signs are required for pesticide storage areas or entrances thereto. The current Rule has specific verbiage which pesticide storage signs must meet. When this Rule was originally created, applicators could purchase signs with this exact verbiage. However, pesticide storage signs currently available for sale no longer contain the required language in the PAA. Because the Rule states that pesticide storage signs “shall” be marked with the specific verbiage used in the Rule, companies must now create their own pesticide storage signs to be in compliance with the Rule. The Department wants to amend Rule 11.05 to permit the use of other types of standardized pesticide storage signage, while maintaining the emergency contact information requirement and storage marking provisions already contained in the Rule, as well as requiring that any applicator who obtains a waiver of this sign requirement from a local fire department maintain a copy of that waiver in the applicator’s files for Department review.
5. On March 30, 2016, the Department passed Rules that outlined the criteria for which pesticides may be applied in the cultivation of Cannabis. Specifically, Rule 17.03 limited the use of pesticides in the cultivation of Cannabis to registered pesticides only. In May 2017, HB 1367 was passed to allow marijuana cultivators and other persons to conduct research and demonstration activities related to pesticide use on marijuana. Research and demonstration activities are for the purpose of developing data on currently unregistered pesticides or pesticides that are not registered for a specific use. The Department proposes to amend Rule 17.03 to allow the use of unregistered pesticides in the cultivation of Cannabis for research and demonstration purposes in accordance with the intent of HB 1367 and 40 CFR Part 172.

18.19. Adopted February 22, 2018 – Effective April 15, 2018

The 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) and (b), C.R.S.

Purpose

The purpose of these Rules is to incorporate federal statutory provisions by reference pursuant to § 24-4-103(12.5)(a), C.R.S. Specifically, these Rules:

1. Amend the title to Part 1 of the Rule to include “Incorporations by Reference.”
2. Amend Part 1 by adding a new Rule 1.03 to address the incorporation by reference provisions.
3. Amend Rules 2.28, 6.05, 11.08, 17.03, 17.04(a)(1), 17.04(b)(1), and 17.04(d) by updating the references to the Code of Federal Regulations (“C.F.R.”) to include the date of the effective edition and by removing repetitive incorporation statements.

Factual and Policy Issues

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

1. On September 20, 2017, the Commissioner of Agriculture adopted Rules to allow Research and Demonstration uses of unregistered pesticides for the cultivation of Cannabis. In this Rule the Department referenced the C.F.R.
2. On November 6, 2017, the Department was notified by the Office of Legislative Legal Services that the Department’s C.F.R. references incorporated into Rule did not comply with the requirements of § 24-4-103(12.5)(a), C.R.S.

3. The proposed Rule changes amend the title of Part 1 to add "Incorporations by Reference" and add a new Rule 1.03 to meet required provisions to incorporate by reference set forth in § 24-4-103 (12.5)(a), C.R.S.
4. Rules 2.28, 6.05, 11.08, 17.03, 17.04(a)(1), 17.04(b)(1), and 17.04(d) are amended to update the C.F.R. edition date to meet required provisions of incorporation by reference as set forth in § 24-4-103 (12.5)(a), C.R.S.
5. Rule 11.08 was amended to remove the existing incorporation language that is now redundant to Rule 1.03.

18.20. Adopted November 15, 2019 – Effective December 30, 2019

Statutory Authority

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

Purpose

The purpose of these proposed amendments is to:

Amend Part 1 and Part 10 of the Rules Pertaining to the Administration and Enforcement of the Pesticide Applicators' Act (the "Rule") to address new landlord and tenant bed bug reporting requirements created by House Bill 19-1328.

Factual and Policy Issues

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

1. Pursuant to section 35-10-118(2)(b), C.R.S., the commissioner is authorized to adopt all reasonable rules for the administration and enforcement of this article, including, but not limited to: the establishment of qualifications for any applicant and standards of practice for any of the licenses authorized under this article.
2. During the 2019 legislative session, the Colorado General Assembly adopted HB 19-1328, effective January 1, 2020. HB 19-1328 amended Title 38, Article 12, Tenants and Landlords, concerning bed bugs in residential premises and established a requirement for commercial pesticide applicators to notify landlords and tenants of bed bug activity and provide remediation instructions.
3. Notification provisions created in HB 19-1328 expressly state that notification and reporting will be in accordance with rules established by the commissioner pursuant to Title 35, Article 10.
4. Part 1, Definitions; of the Rules associated with the Act is amended to add definitions established in HB 19-1328 to include "Contiguous Dwelling Unit," "Dwelling Unit," "Landlord," and "Tenant" to ensure clarity in the new rules established in Part 10.
5. Part 10, Structural Applicators; of the Rules associated with the Act is amended to add new Parts 10.08(a) and (b) to establish what bed bug activity must be reported to the landlord and what remediation recommendations must be provided to the tenant.
6. A new Part 10.08(c) is created to require that the structural applicator who makes the report to a landlord retain a record of the report for three years.

18.21. Adopted December 8, 2021 – Effective January 30, 2022

Statutory Authority

The amendments to these Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“Department”) pursuant to the Commissioner’s authority under the Pesticide Applicators’ Act (the “Act”), §§ 35-10-118(2)(a), (b), (c), (d), (3)(a), (4), (5) and (9) C.R.S.

Purpose

The purpose of these Rules is to incorporate new federal certification and training requirements pursuant to 40 C.F.R. Part 171 and to clarify existing Rule requirements. Specifically, the revisions to the Rules:

1. Update Part 1.02(j) to reflect that Article 36 of Title 12, C.R.S., was renumbered in 2019 and now exists at Article 240;
2. Amend Part 1.03 to incorporate by reference additional provisions from the Code of Federal Regulations;
3. Repeal Parts 2.05.5 and 2.38 consistent with Senate Bill 21-077 (Remove Lawful Presence Verification Credentialing);
4. Amend Parts 2.09 and 2.11 to clarify how applicants provide insurance information to the Department;
5. Create Parts 2.12(c) and (d) and 2.30(c) and (d) to clarify the meaning of adequate supervision by qualified supervisors;
6. Amend Part 2.34 and 2.50 to clarify qualified supervisor/certified operator and private applicator application requirements, respectively, including information on the age and date of birth of the applicant;
7. Amend Part 2.40 to clarify that qualified supervisors may only provide supervision in the licensure category or categories that he or she holds;
8. Amend Part 3.01 to adopt certification standards that meet or exceed federal standards for commercial and private applicators;
9. Amend Parts 4.01, 4.02, 4.04, 4.07 and 4.09 to clarify and update the process for submission of continuing education courses to the Department in a manner that meets federal recertification requirements in 40 C.F.R. § 171.107(b)(2)(iii);
10. Amend Parts 4.05 and 4.10 to clarify the requirements for approval or denial of continuing education courses;
11. Amend Part 5.02(h) to clarify that all training records must be recorded on forms provided by the Department and that those forms must be completed in full in order for a commercial, registered limited commercial, or registered public applicator to comply with the Department’s Rules;
12. Create Part 5.02(k) to comport certification and training requirements for technicians with new federal requirements at 40 C.F.R. § 171.201(d);
13. Create Part 5.02(l) requiring licensed or registered applicators to obtain training records for certain new technicians when those new technicians are hired and to maintain those records consistent with the Rules;

14. Create Part 5.02(m) establishing record retention and record sharing requirements, as well as identifying the records to which those requirements apply;
15. Amend Part 6.03(j) to include the license number as information that must be included on application records;
16. Create Part 7.01(a) to define the term “company business name” as that term appears in Parts 7.01(b) and (c);
17. Create Parts 8.03(f) and 9.04(e) to cross-reference notification and signage requirements appearing in Parts 12 and 13 of the Rules;
18. Amend Part 9.01(a) to clarify sites of application allowed under Category 206, Turf Pest Control;
19. Update Part 13.01 to cross-reference statutory requirements for notification at § 35-10-112(c), C.R.S.;
20. Update Part 13.02 to clarify that signage height requirements do not apply to notices required to be placed in a golf course clubhouses;
21. Update Part 13.04 to clarify notice requirements for gold course clubhouses;
22. Create Part 15.02(c) to adopt private applicator supervision standards that meet or exceed federal standards;
23. Amend Part 17.03 to clarify when existing stocks of certain pesticide products may be used after the product becomes unregistered;
24. Amend Part 17.04 to clarify that no person may use pesticide products on Cannabis if those pesticide products do not meet the conditions specified in Rule; and
25. Correct non-substantive typographical, formatting, and grammatical errors throughout the Rules.

Factual and Policy Issues

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

1. Article 36 of Title 12, C.R.S., was renumbered in 2019 and now exists at Article 240. Part 1.02(j) was updated to reflect the correct statutory provision
2. When an agency incorporates material by reference in its Rules, it must comply with § 24-4-103(12.5)(a), C.R.S. Various edits to these Rules reflect those requirements.
3. On May 27, 2021, Governor Jared Polis signed Senate Bill 21-077 into law. SB21-077 repealed requirements at § 24-34-107, C.R.S., that required individuals applying for licenses with the Department to provide evidence of lawful presence in the United States. As a result, the Department is repealing Parts 2.05.5 and 2.38 concerning the requirement to establish lawful presence as a condition of licensure.
4. Parts 2.09 and 2.11 concern requirements that applicants for licensure provide proof of insurance on a form provided by the Commissioner. However, over the past decade, insurance providers have expressed concern over the language in the Department’s form. This causes delay in processing applications. The Department is aware that the information it requests is often covered by industry forms, such as the ACORD form. Therefore, the Department is revising Parts

- 2.09 and 2.11 to provide flexibility to applicants and to allow the Department to accept standard forms, including the ACORD form, issued by insurance carriers.
5. Part 2.12 of the Rules, concerning adequate supervision of technicians by a qualified supervisor, was last reviewed in 2008. Since then, the pesticide applicator industry has evolved, such that a qualified supervisor is often employed by more than one commercial applicator business. This has caused confusion in the industry concerning the number of technicians that can be supervised by one qualified supervisor, especially when that qualified supervisor is linked to multiple commercial applicator businesses. The new Parts 2.12(c) and (d) clarify and confirm that a qualified supervisor may supervise one or more technicians employed by multiple commercial applicator businesses, so long as the aggregate number of technicians supervised never exceeds 15 at any one time.
 6. On January 4, 2017, the U.S. Environmental Protection Agency published revised certification standards for pesticide applicators (82 Fed. Reg. 952), which standards became effective on March 6, 2017. To comply with these new federal standards, the Department must promulgate and revise its rules pertaining to certification and training of pesticide applicators consistent with the revised State Certification Plan submitted to EPA on March 6, 2020. Therefore, the Department is revising Parts 2.34 and 2.50 of the Rules to reflect requirements in 40 C.F.R. §§ 171.103(a)(1) and 171.105(g), specifically adopting a minimum age requirement for commercial and private applicator certification of at least 18 years old.
 7. Over the past few years, there has been some confusion surrounding the types of activity that a qualified supervisor may supervise. Therefore, the Department is revising Part 2.40 to make clear that a qualified supervisor is only responsible for (and can only provide) supervision in the specific categories of licensure that he or she holds.
 8. As described above, EPA revised its federal standards for the certification and training of licensed pesticide applicators in 2017. States must adopt certification standards that meet or exceed these federal standards. Therefore, the Department is amending Part 3.01 to require compliance with federal certification standards set forth in 40 C.F.R. §§ 171.103 and 105 for commercial and private applicators.
 9. Colorado must also meet federal continuing education requirements at 40 C.F.R. §§ 171.107(b)(2)(i) – (iii) when approving, verifying the content of, and confirming an applicator's attendance at continuing education courses (each a "CEC"). EPA updated these requirements in 2017, and the Department is updating Parts 4.02, 4.04, 4.05, 4.07, 4.09, and 4.10 accordingly. The Department is also providing clarification on the timing and process for a course sponsor to seek approval for CECs. Specifically:
 - a. Revisions to Parts 4.02(b) and 4.07(b) clarify that requests for approval must be submitted on a form provided by the Commissioner;
 - b. Revisions to Parts 4.02(c) and 4.07(c) increase the number of days required to submit CECs to the Department for approval, allowing the Department sufficient time to review and respond to the increasing number and complexity of CEC approval requests that it receives;
 - c. Revisions to Part 4.02(d) and 4.07(d) provide clarity on what information must be provided to the Department to ensure that the content and quality of each proposed session complies with the Rules;
 - d. A new Part 4.02(e) and Part 4.07(e) confirm the session length(s) required to comply with the Rules;
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- e. A new Part 4.02(f) and Part 4.07(f) require that, subject to space availability, all courses must be open to all Colorado licensees. These revisions codify long-standing Department policy intended to ensure equitable CEC opportunities for all Colorado licensees. These revisions promote access to and availability of CEC courses to persons who must attend such courses in order to maintain and/or renew their respective licensure or registration status.;
 - f. Revisions to Part 4.04 and Part 4.09 describe the method by which a course sponsor must provide attendance confirmation to each attendee and the manner in which course sponsors verify course attendance for each attendee with the Commissioner; and
 - g. Revisions to Part 4.05 and 4.10 clarify when the Department may deny a CEC request.
10. As described above, EPA updated its standards in 2017 for training of applicators and for documenting that training, requiring that commercial applicators maintain, provide upon request, and verify training documentation for noncertified applicators and their qualifications. As such, consistent with 40 C.F.R. §§ 171.201(d) and 171.303(b)(7)(vi), the Department is adding the following Parts to the Rules:
- a. Part 5.02(h) to require that training be documented on a form provided by the Commissioner;
 - b. Part 5.02(k), which requires that all noncertified applicator training meets all provisions set forth in 40 C.F.R. § 171.201(d), which specifies subject matter that must be covered;
 - c. Part 5.02(l), which requires that an employer must obtain training records for a new hire experienced technician to ensure that the new hire experienced technician has met all of the training requirements established in the Rules; and
 - d. Part 5.02(m), which defines the records that make up a technician's training record, sets training record retention periods, and establishes a requirement that records be made available to the technician or the Commissioner upon request.
11. EPA also establishes recordkeeping requirements for commercial, registered limited commercial, and registered public applicators. In 2017, EPA updated the relevant standards at 40 C.F.R. § 171.303(b)(7)(vi)(l). Therefore, the Department is updating Part 6.03(j) accordingly, now requiring that commercial applicators record the name and certification number of those making or supervising pesticide applications.
12. Recently, the Department learned that commercial applicators and private applicators interpreted the term "company business name" in multiple ways when complying with Part 7.01 (Equipment Identification), sometimes including names or visual representations on equipment that differed from the name provided to the Department originally. Because the term "company business name" is not defined in Part 7.01, ambiguity exists with respect to whether the vehicle identification must be the company's legal name, a trade name, a company logo, etc. Therefore, the Department is adding Part 7.01(a) to define the term "company business name" to include any name or trade name or trademark registered with the Colorado Secretary of State, any doing business as name as submitted in the licensee's application, and any company logo that clearly communicates the licensee's business name.
13. The Department's Rules include requirements for notifying persons of pesticide applications in Part 12 and for posting specific signage with information on the pesticide application in Part 13. Because notification requirements are also referenced in Articles 8 and 9, and to ensure that the other notification and signage requirements in Rule are not overlooked, the Department is adding

- Parts 8.03(f) and 9.04(e) to cross-reference notification and signage requirements in Parts 12 and 13.
14. In 2010, the Department revised Part 8.01(i) concerning Category 109 to specify permitted sites of application within the Industrial and Right-of-Way Weed Control category. These sites included sidewalks, trails, paths, parking lots, and certain paved areas. This created confusion in the regulated community concerning whether Category 109 also covered areas that were abutted by or surrounded by turf because turf is covered under Category 206. Therefore, the Department is revising Part 9.01(a), Turf Pest Control, to provide additional clarity on what sites of application are allowed under Category 206 as compared with Category 109. Specifically, the Department is expanding Category 206 to allow application on certain managed turf, ornamental beds, xeriscaped areas, and sidewalks, driveways, etc. not located in a zoned right-of-way (which would fall under Category 109).
 15. Part 13, Notification of Pesticide Applications, outlines specific flagging requirements for turf and ornamental applications. To provide additional clarification, the Department is proposing an amendment to Part 13.01 to add a reference to notification flags specified in statute.
 16. Part 13, Notification of Pesticide Applications, outlines specific flagging requirements for turf and ornamental applications. Part 13.02 generally describes the required height of signs, but separate requirements exist for golf course clubhouses. To address this confusion, the Department is amending Part 13.02 to clarify that the height requirements do not apply when posting in golf course clubhouses and amending Part 13.04 to clarify signs posted at golf course clubhouses must be placed in a manner that is conspicuous and easily legible to those entering treated areas.
 17. In 2017, EPA revised its requirements at 40 C.F.R. §§ 171.201(2)(iii)(A)(B) and (C) related to the supervision of restricted use pesticide applications made by private applicators who are 16 years of age. Accordingly, the Department has created Part 15.02(c) to identify under what circumstances a 16-year-old unlicensed technician may apply a restricted-use pesticide. The Department uses the term “unlicensed technician” to refer to “non-certified technicians” or “non-certified applicators,” these latter two terms reflecting the terminology used by EPA in the Code of Federal Regulations. The Department uses these three terms interchangeably in these Rules.
 18. On March 30, 2016, the Department adopted Rules to outline the criteria for which pesticides were allowed for use in Cannabis cultivation. Part 17.03 requires that only registered pesticides be allowed for use in the cultivation of cannabis. However, Part 17.03 does not account for existing stocks policies at the state and federal level that allow for the limited use of existing stocks after a product becomes unregistered (absent a finding that the product poses a significant threat to public health and safety or the environment, in which case existing stocks cannot be used). Therefore, the Department is amending Part 17.03 to allow for the use during the subsequent registration year of an unregistered pesticide product that appeared on the Department’s list of pesticides allowed for use on Cannabis at the time of purchase, but was not re-registered with the Department for the subsequent registration year. This change will allow end users to use any remaining unregistered pesticide product, but only during the registration year following the manufacturer’s failure to renew the registration. This limited ability to use remaining stocks of an unregistered product does not extend to products that the Department has determined pose a significant threat to public health and safety or the environment.
 19. The Department is also amending Part 17.04 to clarify that certain uses of pesticide products on cannabis are considered unlawful acts. Specifically, the Department is clarifying that it is unlawful for a person to use a registered pesticide in the production of cannabis when that product does not meet the criteria set forth in Rule – namely, the pesticide must meet all requirements of Part 17.04(a)(1) – (4), Part 17.04(b)(1) – (3), Part 17.04(d), or Part 17.04(e).

18.22. Adopted November 8, 2023 – Effective December 30, 2023

Statutory Authority

The amendments to these Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“Department”) pursuant to the Commissioner’s authority under the Pesticide Applicators’ Act (the “Act”), §§ 35-10-112(1)(e) and (f), C.R.S., and §§ 35-10-118(2)(a) – (d), (3)(a) – (c), (4), (5) and (9), C.R.S.

Purpose

The purpose of these Rules is to incorporate new federal certification and training requirements pursuant to 40 C.F.R. Part 171, to update the Rules consistent with requirements in Senate Bill 23-192 (“SB23-192”), and to clarify existing Rule requirements. Specifically, the revisions to the Rules:

1. Amend Part 1.02(a) to use the same definition of “alley” as is found in § 42-1-102(3), C.R.S., and to align the meaning of “vehicle” with § 42-1-102(112), C.R.S.
2. Amend Part 1.02(o) to cross-reference the definition of “use” found in Title 35, Article 10, of the Colorado Revised Statutes.
3. Amend Part 1.03 to update materials incorporated by reference.
4. Amend Part 2.54 to match private applicator supervision and training requirements established in federal law.
5. Create a new Part 2.61(a) to establish and require licensure for private applicators in a new Aerial Pest Control licensure category as required by federal law.
6. Create a new Part 2.61(b) to establish and require licensure for private applicators in a new Soil / Non-Soil Fumigation Pest Control licensure category as required by federal law.
7. Amend Parts 4.11, 4.32, and 4.38 to add new continuing education subject matter requirements established in federal law.
8. Amend Part 5.02(c) and (k) to match and correctly refer to technician training and supervision requirements established in federal law.
9. Amend Part 8.01(d) to match language used in federal law.
10. Amend Part 8.01(j) and create a new Part 8.01(j)(1) to match the federal Public Health Pest Control category and to create a new “Government-Sponsored Public Health Pest Control” category.
11. Create a new Part 8.01(l) to establish and require licensure for commercial agricultural applicators in a new Aerial Pest Control licensure category as required by federal law.
12. Create a new 8.01(m) to establish and require licensure for commercial agricultural applicators in a new Soil / Non-Soil Fumigation Pest Control licensure category as required by federal law.
13. Amend Part 9.04(b) to clarify when and what notice of application must be provided for commercial properties or other sites managed or owned by an off-site organization or entity where an owner or agent of the site is not present at the time of application.
14. Amend Part 10.01(c) to align the Structural Fumigation licensure category with new federal requirements.

15. Amend Part 10.01(h) to remove language that is no longer applicable to the Post-Harvest Potato Pest Control licensure category.
16. Create a new 10.01(i) to establish and require licensure for commercial structural applicators in a new Soil / Non-Soil Fumigation Pest Control licensure category as required by federal law.
17. Amend Part 12.01 to clarify that the pesticide-sensitive registry application and medical justification must be for the person who will be listed on the registry.
18. Amend Part 12.02 to add addresses for principal place of employment, school, or both in accordance with new SB23-192 requirements and creates the definition of school this Part pertains to.
19. Amend Part 12.06 to clarify applicability and content of notice requirements for turf or ornamental pesticide applications for persons whose names appear on the pesticide-sensitive registry.
20. Amend Part 12.07 to clarify notice requirements for turf or ornamental pesticide applications and to include an electronic notification provision in accordance with SB23-192.
21. Create a new Part 12.08 to address other notice requirements in SB23-192 concerning turf or ornamental pesticide applications performed on a property that abuts or is entirely located within two-hundred and fifty feet of a pesticide-sensitive person's listed principal residential address, provided the residential address appears in a database to be developed by the Department.
22. Amend Part 12.10 to clarify notice requirements for structural pesticide applications and to include an electronic notification provision for such applications.
23. Amend Part 15.02 to clarify supervision requirements established in federal law.
24. Correct non-substantive typographical, formatting, grammatical, and citation errors throughout the Rules.

Factual and Policy Issues

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

1. The Department learned from stakeholders that the definition of "alley" in Part 1.02(a) is confusing in relation to abutting properties. The Department is updating the definition of "alley" to repeat the definition used in § 42-1-102(3), C.R.S., to clarify that an "alley" is not intended for through vehicular traffic by "vehicles" as that term is defined at § 42-1-102(112), C.R.S., and so would not include a bike path or trail.
2. In the 2023 legislative session, SB23-192 updated the definition of "use" (as in to "use" a pesticide) to meet the new federal definition of "use" established in 40 C.F.R. Part 171 in 2017. Part 1.02(o) now cross-references the new definition of "use" at § 35-10-103(18), C.R.S.
3. As a result of new federal certification and training requirements in 40 C.F.R. §§ 171.201(b) – (d), Part 2.54 is being amended to address new supervision requirements for private applicators that require "on-site" supervision for any use of a restricted use pesticide by an unlicensed individual, including specific training, qualifications, and use-specific conditions that must be met prior to the use of any restricted use pesticide by that unlicensed individual.
4. As a result of new federal certification requirements established in 40 C.F.R. Part 171 (2017), applicators must now hold, in addition to their primary licensure category, a new federal Aerial Pest Control category for any application(s) made aurally. A new Part 2.61(a) for private

- applicators and a new Part 8.01(l) for agricultural applicators has been created to establish the licensure category and the licensure requirement for aerial applications. The revisions provide for obtaining the new category by examination offered by the Department or other state lead agencies within the last 12 months, through reciprocal licensure, or through renewal of the category by obtaining continuing education credit.
5. As a result of new federal certification requirements established in 40 C.F.R. Part 171 (2017), applicators must now hold, in addition to their primary licensure category, a new federal Soil/Non-Soil Fumigation category for any application of a fumigant not made to a structure. A new Part 2.61(b) for private applicators, a new Part 8.01(m) for agricultural applicators, and a new 10.01(i) for structural applicators has been created to establish the licensure category and the licensure requirement for soil / non-soil fumigant applications. The revisions provide for obtaining the new category by examination offered by the Department within the last 12 months, through reciprocal licensure, or through renewal of the category by obtaining continuing education credit. Because soil and non-soil fumigation requirements change from state-to-state, the Department will not allow a person to obtain this licensure category by examination offered in another state.
 6. The revised federal certification requirements also established additional core educational subject matter elements necessary for an applicator to obtain continuing education credit. Parts 4.11, 4.32, 4.38 have been amended to add these new elements.
 7. The revised federal certification requirements now require that commercial applicator technicians must be fully trained prior to the use of an restricted use pesticide and that all supervision, training, qualification, and use-specific conditions at 40 C.F.R. §§ 171.201 must be met. Parts 5.02(c) and (k) have been amended to accurately reference these requirements.
 8. Federal certification licensure categories were updated in 40 C.F.R. Part 171 (2017), and the language of Part 8.01(d) has been revised to match the federal Seed Treatment licensure category.
 9. Federal certification licensure categories were updated in 40 C.F.R. Part 171 (2017). EPA updated the federal public health pest control category, requiring that the category address the use of restricted use pesticides in government-sponsored public health programs. Because this category no longer addresses general use pesticide applications for public health applications made for non-governmental persons or entities (which covers the majority of public health pest control applications in Colorado), the Department created a separate category for non-government commercial applicators who use pesticides for the management and control of pests having public health importance. The proposed amendment to Part 8.01(j) clarifies Colorado's existing public health category for the use of general use pesticides for non-governmental public health pest control applications and adds a new 8.01(j)(1), "Government Sponsored Public Health Pest Control", to meet the federal certification category.
 10. The Department learned that Part 9.04(b) required clarification because the term "commercial" was not broad enough to cover the universe of applications contemplated in Part 9.04(b). The existing language had been specific to applications made to commercial properties, but it did not clearly address other sites that may not be considered "commercial" or zoned "commercial." Part 9.04(b) has been amended to address those sites, including greenbelts or open space areas managed by off-site organizations or entities where an owner of the site or an agent of an owner of the site is not present at the site.
 11. As a result of new federal certification requirements established in 40 C.F.R. Part 171 (2017) concerning soil/non-soil fumigation pesticide applications, Colorado needed to differentiate its existing fumigation category from the new federal category. Therefore, the Department has amended Part 10.01(c) to specifically reference "Structural Fumigation"; define applicable structural sites of application; and ensure that applicators know that category 303, Structural

- Fumigation, must be held for the application of a fumigant when made to any structure, regardless of the pest being controlled or other licensure category(ies) held by the applicator.
12. Because Part 10.01(h) included language concerning the Post-Harvest Potato Pest Control licensure category that is now obsolete, the Department has removed that language.
 13. Part 12.01 establishes the requirement for a pesticide-sensitive person to submit an application to be placed on the pesticide-sensitive registry. Part 12.01 is being amended to clarify that the application and medical justification submitted must be for the person intended to be listed on the registry.
 14. As a result of SB23-192, pesticide-sensitive persons may list their principal place of employment, principal school address, or both as an address or addresses requiring notification of turf or ornamental applications made at those sites. Part 12.02 has been amended to account for this statutory change and adds the definition of schools this Part pertains to.
 15. Part 12.06 specifies what notification information must be provided to a pesticide-sensitive person whose name is on the pesticide-sensitive registry and clarifies that such notice must be provided when a commercial applicator makes a turf or ornamental application to a property that abuts the pesticide-sensitive person's principal residential address and, if provided to the Department, to that person's principal place of employment, school, or both.
 16. SB23-192 provided for the electronic notification of pesticide applications to pesticide-sensitive persons. To clarify underlying notice requirements, the Department has amended Parts 12.07(a) (concerning turf or ornamental applications) and 12.10(a) (concerning structural applications). To further clarify the circumstances and manner in which electronic notice is given to pesticide-sensitive persons whose names appear on the pesticide-sensitive registry, the Department has added Parts 12.07(b) and 12.10(b), which describe that only one attempt at electronic notification is required; a record of the attempt must be maintained in the applicator's records in order to avoid triggering non-electronic notification requirements; and any changes to the date, time, or location of application require an additional electronic notification to be made no less than 24 hours prior to the application.
 17. SB23-192 required that, on or before July 1, 2024, the Department develop a searchable database of all properties that abut or are entirely located within two hundred and fifty feet of any residential address listed on the pesticide-sensitive registry. SB23-192 also required that, once that database was created, the Department adopt rules requiring that applicators provide notice of applications made to a property that is listed in the database as abutting, or being entirely located within two hundred and fifty feet of, the pesticide sensitive-person's listed residential address, which address must be the person's principal residential address in accordance with § 35-10-112(1)(c)(I)(A), C.R.S. A new Part 12.08 has been created to address these new requirements, effective July 1, 2024.
 18. As a result of new federal certification and training requirements in 40 C.F.R. Part 171 (2017), Part 15.02 is being amended to clarify new supervision requirements for private applicators and commercial applicators that now require "on-site" supervision for any use of a restricted use pesticide.

18.23. Adopted March 20, 2024 – Effective May 15, 2024

Statutory Authority

The amendments to these Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("Department") pursuant to the Commissioner's authority under the Pesticide Applicators' Act (the "Act"), §§ 35-10-118(2)(a) – (d), (3)(a) – (c), (4), (5) and (9), C.R.S.

Purpose

The purpose of these Rules is to further clarify new federal certification categories pursuant to 40 C.F.R. Part 171. Specifically, the revisions to the Rules:

- 1) Amend Part 2.61(b), 8.01(m) and 10.01(i) to separate the 309 Soil / Non-soil fumigation category into subcategories that specifically address soil and non-soil fumigation applications.
- 2) Amend Part 8.01(l)(1) to remove the word "agricultural" from the category 114, Aerial Pest Control category definition.

Factual and Policy Issues

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

- 1) In 2023, to comply with federal certification and training requirements, the Department created a new Category 309: Soil / Non-Soil Fumigation Pest Control to address the use of fumigants in relation to all other existing licensure categories.
- 2) At the time the Department promulgated Rules establishing this category, the national soil / non-soil fumigation guide and exam were not available and did not become available until late 2023. By this time, the State of Colorado had already commenced creation of a state-specific examination for licensure in Category 309: Soil / Non-Soil Fumigation Pest Control.
- 3) While developing the state-specific exam for Category 309, the Department learned that, the Category 309 exam covered subject matter that was very specific to soil or non-soil applications. Many test takers would only be making one of these types of applications and therefore the examination may not be representative of the knowledge required to perform those applications. In short, the examination would test for both applications when only one of those applications would ever be made.
- 4) The amendments to the Rules create subcategories in the existing Category 309 to address examination for and certification in two distinct licensure subcategories: Category 309A, concerning the application of fumigants to soil primarily for the purpose of insect, weed and disease control, and Category 309B, concerning applications made to non-soil sites that primarily fall under the structural pest control classification. Category 303: Structural Fumigation Pest Control, will remain unchanged for fumigation applications made in or directly to structures.
- 5) The Department has learned that, although aerial applications have historically only been associated with agricultural applications, other non-agricultural pest management categories are or may utilize aerial application, particularly with unmanned aerial vehicles or UAVs. Therefore, the Department's amendments to the Category 114, Aerial Pest Control, definition remove the "agricultural" pest management designation to clarify the aerial category is required in addition to any pest management category for which the application is made.